(8)

No. 97-643-CFY Title: United States, Petitioner
v.
Vickie S. Cabrales

Docketed: October 10, 1997 Court: United States Court of Appeals for the Eighth Circuit

Entry	Date	Proceedings and Orders
	Aug 29 1997	Application (A97-176) to extend the time to file a petition for a writ of certiorari from September 10, 1997 to October 10, 1997, submitted to Justice Thomas.
	Sep 5 1997	Application (A97-176) granted by Justice Thomas extending the time to file until October 10, 1997.
	Oct 10 1997	Petition for writ of certiorari filed. (Response due November 9, 1997)
	Oct 30 1997	Waiver of right of respondent Vickie S. Cabrales to respond filed.
	Nov 5 1997	DISTRIBUTED. November 26, 1997
	Nov 12 1997	Response requested.
	Dec 11 1997	Brief of respondent Vickie S. Cabrales in opposition filed.
	Dec 24 1997	Reply brief of petitioner United States filed.
	Dec 30 1997	REDISTRIBUTED. January 16, 1998
	Jan 8 1998	Letter from the Solicitor General received and distributed.
	Jan 16 1998	Petition GRANTED. The brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 27, 1998. The brief of respondent is to be filed with the Clerk and served uon opposing counsel on or before 3 p.m., Friday, March 27, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 13, 1998. Rule 29.2 does not apply. SET FOR ARGUMENT April 29, 1998. **********
	Feb 6 1998	Motion of Solicitor General to dispense with printing the joint appendix filed.
	Feb 12 1998	Motion of respondent for leave to proceed further herein in forma pauperis filed.
	Feb 12 1998	Motion of respondent for appointment of counsel filed.
	Feb 17 1998	DISTRIBUTED. fEBRUARY 20, 1998 (Page 52)
	Feb 23 1998	Motion of Solicitor General to dispense with printing the joint appendix GRANTED.
	Feb 23 1998	Motion of respondent for leave to proceed further herein in forma pauperis GRANTED.
	Feb 23 1998	Motion for appointment of counsel GRANTED and it is ordered that John W. Rogers, Esquire, of Columbus, Missouri, is appointed to serve as counsel for the respondent in this case.
	Feb 27 1998	Brief of petitioner United States filed.
	Mar 16 1998	CIRCULATED.
	Mar 27 1998	Brief of respondent Vickie S. Cabrales filed.
	Mar 27 1998	Brief amicus curiae of National Association of Criminal Defense Lawyers filed.

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No. 97-643-CFY

Entry	Date	Proceedings and Orders
	Apr 3 1998	Record filed.
	Apr 6 1998	Record filed.
	Apr 15 1998	Reply brief of petitioner United States filed.
	Apr 29 1998	ARGUED.

Supreme Court, U.S.
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No.

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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39 pp

QUESTION PRESENTED

Whether venue in a prosecution for money laundering under 18 U.S.C. 1956 and 1957 is proper in the district where the illicit funds were generated, when the defendant's unlawful financial transactions occurred in another district.

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In the Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-9a) is reported at 109 F.3d 471. The order of the district court (App., *infra*, 10a-12a) is unreported. The report, recommendation and order of the magistrate (App., *infra*, 13a-16a) is unreported.

JURISDICTION

The court of appeals entered its judgment on March 24, 1997. A petition for rehearing was denied on June 12, 1997. App., *infra*, 21a. On September 5, 1997, Justice Thomas extended the time for filing a petition

for a writ of certiorari to and including October 10, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE INVOLVED

1. Article III, Section 2, Clause 3 of the United States Constitution provides as follows:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

2. The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. Section 1956(a)(1) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction

> which in fact involves the proceeds of specified unlawful activity—
>
> * * * * *
>
> (B) knowing that the transaction is designed in whole or in part —
>
> * * * * *
>
> (ii) to avoid a transaction reporting requirement under State or Federal law,
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

4. Section 1957(a) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever * * * knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

5. Section 3237(a) of Title 18, United States Code, provides as follows:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

> Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

6. Rule 18, Federal Rules of Criminal Procedure, provides as follows:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

STATEMENT

1. Respondent Vickie Cabrales was charged in the Western District of Missouri in a three-count indictment. See App., *infra*, 17a-20a. Count I alleged that respondent in that district and elsewhere had conspired to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 371. App., *infra*, 18a-19a. Count II alleged that respondent in that district and elsewhere had conducted a financial transaction to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 1956(a)(1)(B)(ii). App., *infra*, 19a-20a. Count III alleged that respondent in that district and elsewhere had engaged in a monetary transaction in criminally derived property of a value greater than $10,000, in violation of 18 U.S.C. 1957. App., *infra*,

20a. The indictment alleged that respondent had first deposited a monetary instrument in the amount of $40,000 with the AmSouth Bank of Florida, see *ibid.*, and had shortly thereafter made four separate withdrawals of $9,500 each from the same bank, see *id.* at 19a. The indictment also alleged that the funds in question were derived from "the knowing and intentional distribution of cocaine, a Schedule II controlled substance." *Id.* at 18a, 19a, 20a.

The money laundering offenses described in Sections 1956(a)(1)(B)(ii) and 1957(a) require proof that the funds in question were the product of "specified unlawful activity," and that the defendant knew the funds to have been unlawfully derived. See 18 U.S.C. 1956(a)(1) (statute applies only if the defendant "know[s] that the property involved in a financial transaction represents the proceeds of some form of unlawful activity," and the transaction "in fact involves the proceeds of specified unlawful activity"); 18 U.S.C. 1957(a) (statute applies to person who "knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity"). The term "specified unlawful activity" is defined by 18 U.S.C. 1956(c)(7) and includes "the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act)." 18 U.S.C. 1956(c)(7)(B)(i). See also 18 U.S.C. 1957(f)(3) (for purposes of Section 1957, term "specified unlawful activity" has same meaning as in Section 1956).

2. Respondent moved to dismiss the indictment on the ground of improper venue. The case was referred to a magistrate judge, who recommended that re-

spondent's motion be denied as to Count I (the conspiracy charge) and granted as to Counts II and III. App., *infra*, 13a-16a. With respect to the money laundering charges, the magistrate judge explained that "[t]he deposit and withdrawals occurred in the State of Florida" and that "[n]o activity of money laundering is alleged to have occurred in Missouri." *Id.* at 14a. The magistrate judge concluded on that basis that venue on the money laundering charges was improper in the Western District of Missouri. In so doing, he rejected the government's contention that venue was proper because the drug sales from which the funds were derived had occurred in that district. See *ibid.*

The magistrate judge then addressed the conspiracy charge. He observed that "[v]enue is proper in a conspiracy case 'in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.'" App., *infra*, 14a (quoting *United States* v. *Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996)). Relying on the government's representation that respondent "was present in Missouri during the conspiracy, lived with a conspirator in Missouri, and participated in various activities in Missouri in furtherance of the conspiracy," *id.* at 14a-15a, the magistrate judge recommended that respondent's motion to dismiss the indictment be denied with respect to Count I, *id.* at 15a.

The district court adopted the recommendation of the magistrate judge and ordered that respondent's motion to dismiss the indictment for improper venue be denied as to Count I and granted as to Counts II and III. App., *infra*, 10a-12a.

3. The court of appeals affirmed. App., *infra*, 1a-9a.

The court of appeals acknowledged that, "[w]ere the location of the underlying criminal conduct, standing alone, sufficient to confer venue on a district, the money-laundering charges against [respondent] would be appropriately venued in Missouri." App., *infra*, 6a n.4; see also *id.* at 3a ("The money [respondent] deposited, and later withdrew, was traceable to illegal drug sales which occurred in Missouri."). The court also recognized that "[u]nder 18 U.S.C. § 3237(a), 'continuing offenses' are deemed committed, and venue over those offenses is therefore proper, 'in any district in which such offense was begun, continued, or completed.'" *Id.* at 4a. The court concluded, however, that respondent "was not accused of a 'continuing offense'" because the financial transactions in which she engaged "began, continued, and were completed only in Florida." *Ibid.* In the court of appeals' view, "[t]hat the money came from Missouri is of no moment in this case, because [respondent] dealt with it only in Florida." *Ibid.* The court also stated: "Counts II and III include no act committed by [respondent] in Missouri. Nor does the government charge that [respondent] transported the money from Missouri to Florida. Whether that would make a difference we need not decide in the present case." *Ibid.*

The court of appeals acknowledged that "some of the language in [*United States* v. *Beddow*, 957 F.2d 1330 (6th Cir. 1992)] might be broad enough to cover the fact situation" presented in the instant case.

App., *infra*, 5a.[1] The court concluded, however, that the cases were distinguishable on their facts. The court stated that in *Beddow*, "there was a money-laundering 'scheme' sufficient to confer venue on a different district from that in which the actual transactions took place," and "the defendant was convicted of involvement in each step of that conduct." *Id.* at 4a-5a. In the court of appeals' view, "[t]hat distinction explains why money laundering might have been a continuing offense in [*Beddow*] and not in" the instant case. *Id.* at 5a. The court of appeals further noted that the Seventh Circuit in *United States* v. *Sax*, 39 F.3d 1380, 1390 (1994), had relied on "*Beddow* for the proposition that venue over money-laundering charges is proper in a given district if the underlying criminal conduct (which produced the funds) occurred in that district." App., *infra*, 5a n.4. The court rejected that approach, however, and stated that "[t]o the extent *Sax* would produce such a holding, we respectfully disagree." *Ibid.*

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[1] The court of appeals referred, in particular, to the following statement in the *Beddow* opinion:

> Under section 3237(a) venue is proper in any district where any part of the money laundering scheme occurred. In the present case, it is clear that the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan. Also, Count 4 involved travel that originated in Traverse City. We conclude that these acts were essential elements of the money laundering offenses and that they were sufficient to confer venue under section 3237(a).

App., *infra*, 5a n.4 (quoting *Beddow*, 957 F.2d at 1336).

REASONS FOR GRANTING THE PETITION

In deciding where venue in a federal criminal prosecution may properly lie, the court must determine where the offense was committed. As this Court explained in *United States* v. *Anderson*, 328 U.S. 699, 704-705 (1946), "[t]he constitutional specification is geographic; and the geography prescribed is the district or districts within which the offense is committed. This may or may not be the place where the defendant resides." In deciding where an offense was committed, "the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *Id.* at 703. "[W]here a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916).

Under those principles, venue was proper in this case: Because an essential element of the money laundering offenses defined by 18 U.S.C. 1956 and 1957 is that the funds in question must be derived from "specified unlawful activity," the district in which that unlawful activity occurred is a proper venue for a money laundering prosecution. The Eighth Circuit's contrary holding is incorrect, conflicts with decisions of four other courts of appeals, and threatens to complicate the efficient conduct of prosecutions under the federal money laundering statutes.

1. The Eighth Circuit's decision in this case conflicts with decisions of other courts of appeals. The Fourth, Sixth, Seventh, and Ninth Circuits have held that venue for money laundering offenses is proper in the district in which the funds were unlawfully generated, even if the financial transaction that con-

stitutes the laundering occurred wholly within another district. See *United States* v. *Heaps*, 39 F.3d 479, 482 (4th Cir. 1994); *United States* v. *Beddow*, 957 F.2d 1330, 1335-1336 (6th Cir. 1992); *United States* v. *Sax*, 39 F.3d 1380, 1390-1391 (7th Cir. 1994); *United States* v. *Angotti*, 105 F.3d 539, 544-545 (9th Cir. 1997).

The Sixth Circuit in *Beddow* offered the most extensive analysis of the question presented here. The court held that "money laundering offenses are cognizable under 18 U.S.C. § 3237(a) as continuing offenses." 957 F.2d at 1336. It observed that "[u]nder section 3237(a) venue is proper in any district where any part of the money laundering scheme occurred." *Ibid.* It noted that "[i]n the present case, it is clear that the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan." *Ibid.* The court concluded that the illegal acts that had generated the funds in question "were essential elements of the money laundering offenses and that they were sufficient to confer venue under section 3237(a)." *Ibid.* The courts in *Heaps*, *Sax*, and *Angotti* followed *Beddow*'s analysis. See *Heaps*, 39 F.3d at 482; *Sax*, 39 F.3d at 1390; *Angotti*, 105 F.3d at 545.

In the instant case, the court of appeals attempted to distinguish *Beddow* on the grounds that *Beddow* involved "a money-laundering 'scheme,'" App., *infra*, 4a-5a, and that "[t]he defendant in *Beddow* was convicted of the crimes which produced the funds which were laundered," *id.* at 5a.[2] Although the defendant in

[2] The court of appeals also purported to distinguish *Beddow* by noting that "the money-laundering conduct in *Beddow* extended over more than one district," since the defendant in that case "had acquired [the tainted] funds in one district and transported them into another." App., *infra*, 5a. That observation was relevant to one of the money laundering counts in *Beddow*, which charged transportation of unlawfully acquired funds, in violation of 18 U.S.C. 1956(a)(2)(B). See *Beddow*, 957 F.2d at 1332, 1334 & n.2, 1336 (noting that "Count 4 involved travel that originated in Traverse City"). Nothing in the *Beddow* opinion suggests, however, that the Sixth Circuit regarded the defendant's transportation of the unlawfully acquired funds as relevant to the other money lanudering counts, which charged transactions consisting of transferring money in another district. As to those counts, the *Beddow* court relied on the fact that the unlawfully derived proceeds, though involved in a transaction in another district, were generated in the district in which the indictment was returned. See *ibid.*

Beddow was convicted of conspiracy to possess and distribute cocaine (at the same trial in which he was convicted of money laundering), see 957 F.2d at 1332, the Sixth Circuit's discussion of the venue issue contains no mention of that fact, see *id.* at 1335-1336. Rather, the court simply noted that "the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan," *id.* at 1336—a formulation that suggests that the Sixth Circuit deemed the identity of the persons engaged in the drug trafficking activity to be immaterial to the determination of proper venue for the money laundering charges.

The other courts of appeals that have addressed the question have not read *Beddow* as limited to cases in which the defendant in a money laundering prosecution is also convicted of the offenses that generated the tainted funds. Rather, those courts have construed *Beddow* as announcing a per se rule that money laundering prosecutions may always be brought in the district in which the laundered funds

were generated, and they have adopted the *Beddow* approach as so construed. See *Heaps*, 39 F.3d at 482 (citing *Beddow* with approval for proposition that "venue for a money laundering case is proper in any district in which the specified unlawful activity occurs"); *Sax*, 39 F.3d at 1390 ("Evidence shows that the funds used for the acts of money laundering * * * were the proceeds of [another person's] drug sales in the Central District of Illinois. This is sufficient to confer proper venue [in that district] under § 3237(a). See [*Beddow*]."); *Angotti*, 105 F.3d at 545 ("we follow the lead of the Sixth Circuit, which held in [*Beddow*] that money laundering is a continuing offense and that venue may lie in the district where the illegal money was obtained").[3]

2. The Fourth, Sixth, Seventh, and Ninth Circuits were correct in holding that venue in a money laundering prosecution under Section 1956 or 1957 is proper in the district in which the laundered funds were unlawfully generated, even when the laundering transactions took place elsewhere. An essential element of the criminal activity in those money laundering offenses is that the funds in question be shown to constitute the proceeds of "specified unlawful activity." 18 U.S.C. 1956(a)(1), 1957(a). For purposes of the relevant constitutional and statutory provisions, those offenses may therefore properly be said to have been committed in, *inter alia*, the district in which those proceeds were generated.

---

[3] The court of appeals in the instant case acknowledged that "*United States v. Sax* cites *Beddow* for the proposition that venue over money-laundering charges is proper in a given district if the underlying criminal conduct (which produced the funds) occurred in that district." App., *infra*, 5a. The court did not cite either *Heaps* or *Angotti*.

The venue rules governing money laundering prosecutions are similar, in this respect, to those that apply to conspiracy cases under 18 U.S.C. 371. The general conspiracy statute, while requiring proof of an overt act in furtherance of the conspiracy, makes clear that the requirement may be satisfied by proof of an overt act by a person other than the defendant. See 18 U.S.C. 371 ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both."). It is well established, moreover, that venue in a conspiracy prosecution is proper in any district in which an overt act in furtherance of the conspiracy was committed by *any* of the conspirators. See, *e.g.*, App., *infra*, 2a n.2; *Heaps*, 39 F.3d at 482; *United States* v. *Smith*, 918 F.2d 1551, 1557 (11th Cir. 1990); *United States* v. *Uribe*, 890 F.2d 554, 558 (1st Cir. 1989); *United States* v. *Meyers*, 847 F.2d 1408, 1411 (9th Cir. 1988). As in the conspiracy context, venue in a money laundering prosecution may properly lie in a district in which an essential element of the charged offense was committed by a person other than the defendant. The court of appeals therefore erred in concluding that the origin of the tainted money in Missouri was "of no moment in this case, because [respondent] dealt with it only in Florida." App., *infra*, 4a.

3. The question presented is of importance to the enforcement of the money laundering statutes. Federal prosecutors frequently wish to try money laundering counts together with charges for the substantive criminal offenses that generated the tainted

funds. Because the "specified unlawful activity" that generated the funds must be proved in the money laundering prosecution, that practice conserves the resources of the parties and the courts. The rule adopted by the Eighth Circuit would impair the efficient conduct of such prosecutions, at least in cases where the defendant charged with money laundering is not also charged with the "specified unlawful activity" that produced the funds. More generally, the government has a strong interest in venue rules that are clear, uniform, and easily administered, particularly because an appellate court's post-trial determination that venue was improper may serve as the basis for reversal of a criminal conviction. See, *e.g.*, *Travis* v. *United States*, 364 U.S. 631, 637 (1961).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

SETH P. WAXMAN
Acting Solicitor General
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OCTOBER 1997

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3080WM

UNITED STATES OF AMERICA, APPELLANT

v.

VICKIE S. CABRALES, APPELLEE

[Submitted Jan. 17, 1997
Decided March 24, 1997]

Before: RICHARD S. ARNOLD, Chief Judge, ROSS and BEAM, Circuit Judges.

RICHARD S. ARNOLD, Chief Judge.

Vickie Cabrales was charged with one count of conspiring to launder money and two counts of money laundering in the District Court for the Western District of Missouri. The District Court[1] dismissed the two counts of money laundering as improperly venued in that Court. The Government appeals the dismissal. We affirm.

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[1] The Hon. Scott O. Wright, Jr., United States District Judge for the Western District of Missouri, acting on the recommendation of the Hon. William A. Knox, United States Magistrate Judge for the Western District of Missouri.

I.

Vickie Cabrales was charged with the following three offenses: conspiracy to avoid a transaction-reporting requirement (Count I), 18 U.S.C. §§ 371, 1956(a)(1)(B)(ii); conducting a financial transaction to avoid a transaction-reporting requirement (Count II), 18 U.S.C. § 1956(a)(1)(B)(ii); and engaging in a monetary transaction in criminally derived property of a value greater than $10,000 (Count III), 18 U.S.C. § 1957.

The District Court dismissed Counts II and III as improperly venued in Missouri, reasoning that none of the acts which constitutes money laundering occurred in Missouri.[2] The Government does not dispute that the acts which form the elements of those offenses occurred outside Missouri. It maintains, however, that the criminal offenses which necessitated the money laundering did occur in Missouri, and that venue was therefore proper in the Western District of Missouri under a "continuing offense" analysis.

[2] The Court did not dismiss Count I, the conspiracy charge, because overt acts did occur in Missouri. Venue is proper in a conspiracy case in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators. See *United States v. Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir.1995), *cert. denied*, —— U.S. ——, 116 S.Ct. 741, 133 L.Ed.2d 690 (1996). Count I is not part of this appeal. It remains pending in the District Court.

II.

The money-laundering charges are based on a series of deposits and withdrawals made by Cabrales at a Florida bank. The money Cabrales deposited, and later withdrew, was traceable to illegal drug sales which occurred in Missouri. The government asserts that since the drug conspiracy operated in Missouri, and Cabrales was "laundering" its profits, she can be tried in Missouri.

Both Rule 18 of the Federal Rules of Criminal Procedure and the Constitution require that a person be tried for an offense where that offense is committed.[3] "[T]he *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Anderson*, 328 U.S. 699, 703, 66 S.Ct. 1213, 1216, 90 L.Ed. 1529 (1946).

The acts constituting money laundering for the purposes of this case are outlined in §§ 1956(a)(1) and 1957, which make it a crime to:

> knowing[ly] . . . conduct[ ] or attempt[ ] to conduct . . . a financial transaction which . . . involves the proceeds of specified unlawful activity . . . knowing that the transaction is designed in whole or in part

[3] Rule 18 provides, in pertinent part, that "prosecution shall be had in a district in which the offense was committed." Rule 18 echoes the command of Article III of the Constitution, which requires that, "Trial shall be held in the State where the said Crimes shall have been committed," and of the Sixth Amendment, which requires trial " by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. art. III, § 2, cl. 3 & amend. VI.

> . . . to avoid a transaction reporting requirement under State or Federal law,

and to "knowingly engage[ ] or attempt[ ] to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity."

Under 18 U.S.C. § 3237(a), "continuing offenses" are deemed committed, and venue over those offenses is therefore proper, "in any district in which such offense was begun, continued, or completed." As is clear from the statutes quoted above, Cabrales was not accused of a "continuing offense." She was charged with money laundering, for transactions which began, continued, and were completed only in Florida. That the money came from Missouri is of no moment in this case, because Cabrales dealt with it only in Florida. Counts II and III include no act committed by Cabrales in Missouri. Nor does the government charge that Cabrales transported the money from Missouri to Florida. Whether that would make a difference we need not decide in the present case.

III.

The government cites several cases which it believes should dictate a different result. For various reasons, they do not. But because some contain language which, if applied to Cabrales's case, might conflict with the result we now reach, we discuss them briefly.

In *United States v. Beddow*, 957 F.2d 1330 (6th Cir.1992), for example, money laundering was held cognizable under § 3237(a) as a continuing offense. The Court in *Beddow* held there was a money-

laundering "scheme" sufficient to confer venue on a different district from that in which the actual transactions took place. *Id.* at 1336. *Beddow*, however, presented different facts than the instant case. The defendant in *Beddow* was convicted of the crimes which produced the funds which were laundered, and had acquired those funds in one district and transported them into another. While some of the language in that case might be broad enough to cover the fact situation before us, we believe the facts that the money-laundering conduct in *Beddow* extended over more than one district, and that the defendant was convicted of involvement in each step of that conduct, distinguish the case. That distinction explains why money laundering might have been a continuing offense in that case and not in the one now before us.[4]

---

[4] The language to which we refer is the following:

> Under section 3237(a) venue is proper in any district where any part of the money laundering scheme occurred. In the present case, it is clear that the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan. Also, Count 4 involved travel that originated in Traverse City. We conclude that these acts were essential elements of the money laundering offenses and that they were sufficient to confer venue under section 3237(a).

957 F.2d at 1336.

United States v. Sax cites *Beddow* for the proposition that venue over money-laundering charges is proper in a given district if the underlying criminal conduct (which produced the funds) occurred in that district. 39 F.3d 1380, 1390 (7th Cir.1994). We note that the holding in *Beddow* appears to have depended on the combination of two facts: the underlying conduct occurred in the same district where the defendant began transportation of the funds which were to be laundered.

The government also cites *United States v. Hernando Ospina*, 798 F.2d 1570 (11th Cir.1986). In that case, two defendants were charged with concealing material facts from the IRS. The defendants argued venue was improper in the Southern District of Florida because the "concealment" resulted from the non-filing of currency transaction reports in Washington, D.C. The *Ospina* court rejected that argument, noting that, "it is undisputed that the scheme to conceal was formulated and virtually all the affirmative acts comprising that scheme were carried out in the Southern District of Florida." *Id.* at 1577. While the non-filing of the reports may have been the ultimate occurrence which kept information from reaching the IRS, the statute criminalizes the entire scheme. 18 U.S.C. § 1001, under which the defendants in *Ospina* were charged, makes it a crime to "knowingly and willfully . . . conceal[ ] or cover [ ] up by any trick, scheme, or device a material fact" in any matter within the jurisdiction of a federal agency. The statute explicitly criminalizes the scheme itself. The acts by the defendants in Florida were thus directly prohibited by the statute, and the crime was "committed" at least partly in Florida. Since no acts prohibited by 18 U.S.C. §§ 1956(a)(1)(B)(ii) and 1957 were committed by Cabrales in Missouri, *Ospina* is of no help to the government in the instant case.

Were the location of the underlying criminal conduct, standing alone, sufficient to confer venue on a district, the money-laundering charges against Cabrales would be appropriately venued in Missouri. To the extent *Sax* would produce such a holding, we respectfully disagree.

Finally, in *United States v. Chandler*, 66 F.3d 1460 (8th Cir.1995), a panel of our Court declined to reverse a conviction for accepting and receiving a gratuity in connection with the making of a loan because venue in the Eastern District of Arkansas was improper. In so doing, we affirmed the district court's refusal to sever those charges because they were "inextricably linked" to the other crimes with which the defendant was charged.

In *Chandler*, however, the trial jury found that venue was proper in the Eastern District of Arkansas. The location of the crime was disputed, and was therefore before the jury. We could have disturbed that verdict only if no reasonable jury could have reached the conclusion that one did. We held that the jury could reasonably have found that the crime was committed at least partly in the Eastern District of Arkansas. There is no factual ambiguity in the case now before us. Nowhere does the government allege that any part of the money-laundering transactions in question occurred outside Florida, and there is certainly no jury finding that they did.

Other cases provide better guidance for the case at bar. In *United States v. Swann*, 441 F.2d 1053 (D.C.Cir.1971), the Court reversed a district court holding that venue over a jury-tampering charge was proper in the District of Columbia when the jury was empaneled in a District of Columbia court but the tampering had occurred in Maryland. In reversing, the Court declined to view the crime as a "continuing offense," focusing its attention on the specific facts alleged and the crime charged:

> [t]he appellant's offense was not begun in one district and completed in another, or committed in more than one district. The offense condemned by the statute and charged in the indictment was begun, carried out and completed in the State of Maryland when the appellant "did injure the person of said Pauline Hawkins. . . ."

Id. at 1055.

We have adopted that approach in prior cases in this circuit as well. In *United States v. Brakke*, 934 F.2d 174 (8th Cir. 1991), defendant Brakke was accused of obstruction of justice for failing to comply with two federal marshals' requests that he pull over his vehicle and get out of it so it could be seized. The marshals began following Brakke in North Dakota, but did not signal him to stop until after he had crossed the state line into Minnesota. Consequently, Brakke did not refuse to comply until he was in Minnesota. The District Court for the District of North Dakota dismissed the charge for lack of venue, and our Court affirmed, holding:

> After reviewing the record . . . we can discern no support for the Government's contention that Brakke's obstructive conduct extended over two districts. . . . The only acts which formed the basis for the obstruction charge, Brakke's passive resistance to the marshalls' [sic] requests that he vacate his vehicle, occurred after Brakke had crossed into Minnesota. Accordingly, we agree with the district court's ruling that venue for the obstruction charges does not lie in the District of North Dakota.

Id. at 176-77 (footnote omitted).

IV.

The only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which Cabrales executed only in Florida. Under these facts and the analytical framework established in *Brakke*, the District Court correctly dismissed Counts II and III as improperly venued in Missouri. Accordingly, we affirm.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 95-04022-01-CR-C-5

UNITED STATES OF AMERICA, PLAINTIFF

v.

VICKIE S. CABRALES, DEFENDANT

[Filed: June 28, 1996]

ORDER

On June 10, 1996, the United States Magistrate Judge recommended that defendant's motion to dismiss be granted as to Counts II and III and denied as to Count I. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

A conference was held in this case on June 24, 1996. A *de novo* review of the record,[1] including the exceptions filed by plaintiff on June 14, 1996, and defendant's exceptions filed on June 17, 1996, and

[1] Court proceedings, if any, are recorded by electronic recording equipment and the tapes are available for review by the court and counsel.

comments and arguments of counsel during the conference, convince the court that the recommendation of the Magistrate Judge is correct and should be adopted.

The parties advised the court of their intent to take an interlocutory appeal and requested a continuance of the trial setting to allow for appeal.

IT IS, THEREFORE, ORDERED that defendant's motion of May 2, 1996, to dismiss for lack of proper venue is denied as to Count I and granted as to Counts II and III. [16] It is further

ORDERED that the joint motion for continuance of this criminal action is granted and this criminal action is removed from the joint criminal jury trial docket which will commence July 1, 1996. It is further

ORDERED that this criminal action will be set for trial on the next joint criminal jury trial docket following resolution of the appeal. It is further

ORDERED that the pretrial conference will be held in this matter at a time to be announced later. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h), the time between the date of this order and the next joint criminal jury trial docket following resolution of the appeal shall be excluded in computing the time within which the trial of this criminal action must commence. It is further

ORDERED that defendant's motion of June 13, 1996, for continuance is denied as moot. [26]

Dated this *28th* day of June, 1996, at Kansas City, Missouri.

/s/ SCOTT O. WRIGHT
SCOTT O. WRIGHT
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 95-04022-01-CR-C-5

UNITED STATES OF AMERICA, PLAINTIFF

v.

VICKIE S. CABRALES, DEFENDANT

[Filed: June 10, 1996]

REPORT, RECOMMENDATION AND ORDER

Following the filing of this criminal action, it was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and W.D. Mo. R. 22.

On May 2, 1996, defendant filed a motion to dismiss for lack of proper venue. The Government responded in opposition to defendant's motion.

Proper venue is required by the United States Constitution and the Federal Rules of Criminal Procedure. Venue is proper in a district where the crime was committed and must be proven by the Government by a preponderance of the evidence. *United States v. Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995); Fed. R. Crim. P. 18.

Defendant has been charged in three counts. Count I alleges defendant conspired to conduct a financial transaction involving the proceeds of a specified unlawful activity in violation of 18 U.S.C. § 371. Count II alleges defendant knowingly conducted and attempted to conduct a financial transaction involving the proceeds of unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(B)(ii). Count III alleges defendant engaged or attempted to engage in a monetary transaction involving criminally derived property of a value of greater than $10,000.00 in violation of 18 U.S.C. § 1957. The overt acts set forth in the indictment relate to withdrawals of money from the AmSouth Bank of Florida on four dates in January, 1991. The indictment also indicates a $40,000.00 deposit made to the AmSouth Bank of Florida on January 22, 1991.

Counts II and III are money laundering charges. The deposit and withdrawals occurred in the State of Florida. No activity of money laundering is alleged to have occurred in Missouri. The Government's argument that venue is proper under 18 U.S.C. § 3237 because the transactions involved funds from drug sales in Missouri is not persuasive. Thus, defendant's motion to dismiss Counts II and III will be recommended granted.

Count I is a charge of conspiracy. "Venue is proper in a conspiracy case 'in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.'" *Bascope-Zurita*, 68 F.3d at 1062. The Government asserts defendant was present in Missouri during the conspiracy, lived with a conspirator in Missouri, and participated in various activities in Missouri in

furtherance of the conspiracy. While the factual allegations of actions in Missouri in furtherance of the conspiracy are not set forth in the indictment, the Government is entitled to present the evidence to the jury. *Id.* at 1062 (venue is generally fact question for jury to decide when relevant facts to determining venue are disputed).

The parties are advised that because a courtroom is not available on June 24, 1996, this case will be tried commencing the second week of the trial docket and will begin on July 1, 1996, for a period not to exceed three days.

IT IS ORDERED that the trial in this case will commence on July 1, 1996, and shall not exceed three days. It is further

RECOMMENDED that defendant's motion of May 2, 1996, to dismiss for lack of proper venue be denied as to Count I and granted as to Counts II and III. [16]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within seven (7) days. If additional time is needed, a motion for an extension of time must be filed within seven (7) days. The motion should state the reasons for the request. *See Nash v. Black*, 781 F.2d 665, 667 (8th Cir. 1986) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). Exceptions must be filed, **in duplicate**, pursuant to W.D. Mo. 3E. Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this *10th* day of June, 1996, at Jefferson City, Missouri.

/s/ WILLIAM A. KNOX
WILLIAM A. KNOX
United States Magistrate Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 95-04022-01-CR-C-5

UNITED STATES OF AMERICA, PLAINTIFF

v.

VICKIE S. CABRALES [DOB: 07/20/65], DEFENDANT

COUNT ONE:
18 U.S.C. § 371
NMT 5 Years
$250,000 Fine
Class D Felony
Supervised Release: NMT 3 Years

COUNT TWO:
18 U.S.C. § 1956(a)(1)(B)(ii)
NMT 20 Years
$500,000 Fine
Class C Felony
Supervised Release: NMT 3 Years

COUNT THREE:
18 U.S.C. § 1957
NMT 10 Years
$250,000 Fine
Class C Felony
Supervised Release: NMT 3 Years

$50 Special Assessment
(Each Count)

[Filed: Sept. 6, 1995]

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

That from on or about January 22, 1991, to on or about January 28, 1991, in the Western District of Missouri, and elsewhere, VICKIE S. CABRALES, defendant herein, did knowingly and intentionally combine, conspire, confederate and agree with others both known and unknown to the grand jury, to commit offenses against the United States, to wit, conducting and attempting to conduct a financial transaction affecting interstate and foreign commerce, that is, the withdrawal of United States currency from the AmSouth Bank of Florida, which involved proceeds of a specified unlawful activity, that is, the knowing and intentional distribution of cocaine, a Schedule II controlled substance, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, contrary to Title 18, United States Code, Section 1956(a)(1)(B)(ii); all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of this conspiracy and to effectuate and accomplish the unlawful objectives thereof, one or more of the conspirators committed the following overt acts, among others:

1. On or about January 22, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

2. On or about January 23, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

3. On or about January 24, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

4. On or about January 28, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

COUNT TWO

That on or about January 23, 1991, in the Western District of Missouri, and elsewhere, VICKIE S. CABRALES, defendant herein, did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the withdrawal of $9,500 in United States Currency from the AmSouth Bank of Florida, which involved the proceeds of a specified unlawful activity, that is, the knowing and intentional distribution of cocaine, a Schedule II controlled substance, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law and that while conducting and attempting to conduct such financial transaction knew that the property

involved in the financial transaction, that is, the funds in the amount of $9,500 represented the proceeds of some form of unlawful activity; all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(ii).

COUNT THREE

That on or about January 22, 1991, in the Western District of Missouri, and elsewhere, VICKIE S. CABRALES, defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commence, in criminally derived property of a value greater than $10,000, that is, the deposit of a monetary instrument in the amount of $40,000, with the AmSouth Bank of Florida, such property having been derived from a specified unlawful activity, that is, the knowing and intentional distribution of cocaine, a Schedule II controlled substance, all in violation of Title 18, United States Code, Section 1957.

A TRUE BILL.

/s/ GLENDA M. CLAK
FOREPERSON OF THE GRAND JURY

/s/ E. EUGENE HARRISON
E. Eugene Harrison #26923
Assistant United States Attorney
Western District of Missouri

Dated: September 6, 1995

EEH:tas

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3080WMJC

UNITED STATES OF AMERICA, APPELLANT,

v.

VICKIE S. CABRALES, APPELLEE

[Filed: June 12, 1997]

ORDER DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

The appellant's suggestion for rehearing en banc and appellant's petition for rehearing by the panel are denied.

June 12, 1997

Ordered Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

Supreme Court, U.S.
FILED
DEC 11 1997
CLERK

No. 97-643

In The

Supreme Court of the United States

October Term, 1997

UNITED STATES OF AMERICA,

Petitioner,

v.

VICKIE S. CABRALES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent is satisfied with and generally adopts Petitioner's statements of the Opinions Below, Jurisdiction, Constitutional and Statutory Provisions and Rule Involved, and Statement, except for the following omission. Respondent, as well as Petitioner, filed a motion for rehearing in the United States Court of Appeals for the Eighth Circuit. Petitioner's motion for rehearing was denied on June 12, 1997; however, the Court amended its decision upon Respondent's motion. The Order of the Court (App., *infra*, 1a) amending its decision is reported at 115 F.3d 621.

ARGUMENT

The Eighth Circuit correctly refused to follow the lead of the Fourth,[1] Sixth,[2] Seventh,[3] and Ninth[4]

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[1] The issue in *United States v. Heaps*, 39 F.3d 479, 482 (4th Cir. 1994), was whether the district court abused its discretion in denying the defendant's motion for a change of venue pursuant to FED R. CRIM. P. 21(b). *Heaps*, 39 F.3d at 482. Thus, with venue admittedly proper where the defendant was tried, *Heaps* is not relevant to the instant case. *Id.*

[2] The Eighth Circuit distinguished *United States v. Beddow*, 957 F.2d 1330, 1336 (6th Cir. 1992), in the opinion below. See App., Petition, 4a-6a, n.4. In addition to the differences stated by the Eighth Circuit, it is noteworthy that the Sixth Circuit determines venue based on the so-called "substantial contacts rule" that takes into account a number of factors including "the site of the defendant's acts, the elements and nature of the crime, the locus of the effect of criminal conduct, and the suitability of each district for accurate fact finding. . . ." *Beddow*, 957 F.2d at 1335 (*quoting United States v. Williams*, 788 F.2d 1213, 1215 (6th Cir. 1986). Moreover, *Beddow* cites *United States v. Ospina*, 798 F.2d 1570, 1577 (11th Cir. 1986), for the novel proposition of law it apparently announced; *Ospina*, however, is not authority for "a per se rule that money laundering prosecutions may always be brought in the district in which the laundered funds were generated." Petition, 11-12. Thus, if *Beddow* does stand for such a proposition, as Petitioner claims, then the Sixth Circuit so held with no authority on which to base its conclusion.

[3] *United States v. Sax*, 39 F.3d 1380, 1390 (7th Cir. 1994), without analysis, relies on *Beddow* for the proposition "that the funds used for the acts of money laundering . . . were the proceeds of [another person's] drug sales in the Central District of Illinois. This is sufficient to confer proper venue [in that district] under § 3237(a)."

[4] *United States v. Agnotti*, 105 F.3d 539, 545 (9th Cir. 1997), without analysis, held that "[t]he money laundering began in the district from which the funds were obtained and,

Circuits in rendering meaningless the venue provisions contained in the constitution by permitting venue, in a money laundering[5] prosecution, to be based on the location of the illegal acts that generated the money that was allegedly laundered. In arguing that venue in a district is proper in a money laundering prosecution based solely on the fact that the underlying criminal conduct occurred in the district, Petitioner ignores that money laundering is a crime separate and distinct from the "specified unlawful activity" to which the statute refers. Petitioner also ignores that proving the categorical delineation or

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accordingly venue was proper there as well. See 18 U.S.C § 3237(a). In so holding, we follow the lead of the Sixth Circuit, which held in *United States v. Beddow*, 957 F.2d 1330 (6th Cir. 1992), that money laundering is a continuing offense and that venue may lie in the district where the illegal money was obtained."

[5] Respondent refers to a prosecution under 18 U.S.C. § 1956(a)(1)(B)(ii) or 18 U.S.C. § 1957(a) when using the term "money laundering." Because the linchpin of Petitioner's argument is that the money that is laundered "in fact involves the proceeds of specified unlawful activity," 18 U.S.C. § 1956(a)(1), making it allegedly "an essential element of the money laundering offenses," Petition, 9, it is necessary to restrict the term to the specific sections at issue in that certain violations of the statute do not contain this element of the offense. See, *e.g.*, 18 U.S.C. § 1956(a)(3) (making it a crime to conduct or attempt to conduct "a financial transaction involving property represented to be the proceeds of specified unlawful activity"); *United States v. Dimeck*, 815 F.Supp. 1425, 1428 (D.Kan. 1993), *rev'd on other grounds*, 24 F.3d 1239 (10th Cir. 1994) ("Congress intended that section 1956(a)(3) apply to the very situation presented by this case – a sting operation in which the property involved was not *in fact* proceeds (as required in section 1956(a)(1)), but rather, was property *represented and believed by the defendant to be* proceeds.") (emphasis in original).

status of the money, *i.e.*, that it "involves the proceeds of specified unlawful activity,"[6] is materially different from proving the underlying criminal conduct. Stated differently, Petitioner's argument ignores that the underlying "specified unlawful activity" is not an element of money laundering. By ignoring these key points of law, Petitioner erroneously concludes that money laundering begins with the "specified unlawful activity" and ends with the prohibited financial transaction making it a "continuing offense" under 18 U.S.C. § 3237(a). Finally, while Petitioner recognizes that *United States v. Anderson*, 328 U.S. 699, 703 (1946), controls the determination of whether venue is proper, Petitioner fundamentally misapplies its holding.

A. Petitioner's argument is flawed in that the underlying criminal conduct is not an element of money laundering.

The crux of Petitioner's argument is that because "an essential element of the money laundering offenses is that the funds in question must be derived from 'specified unlawful activity,' " Petition, 9, Petitioner concludes that the district in which the unlawful activity occurred is a proper venue for a money laundering prosecution. This

[6] Petitioner focuses too narrowly on the phrase "specified unlawful activity" and fails to recognize that this phrase modifies the term "proceeds"; it is the *type* of proceeds, *i.e.*, that they be derived from "specified unlawful activity," that is a necessary element of a section 1956(a)(1) prosecution, not the criminal acts of the underlying illegal activity.

argument presupposes that proving the categorical delineation or the status of the money is the same as proving the underlying criminal conduct. The flaw in this argument, of course, is that proving that money is "the proceeds of specified unlawful activity" is different than proving the *commission* of certain specified unlawful activity. See *United States v. Smith*, 44 F.3d 1259, 1264 (4th Cir. 1995) ("While it is necessary in order to include such an allegation [that the money be derived from specified unlawful activity], the requirement is merely a categorical delineation of the type of funds that are subject to a money laundering charge.").

For example, in *United States v. Ospina*, 798 F.2d 1570 (11th Cir. 1986), the government presented evidence that each time an undercover agent received money from the defendant to launder, a narcotics dog reacted positively to the presence of narcotic residue on the currency. *Id.* at 1573, 1574, 1575. The government also presented evidence that the money was always extremely dirty, that it had a powdery substance on it, and that when the undercover agents were counting the money in a money machine, a cloud came up and the agents ended up with headaches. *Id.* at 1574. The Eleventh Circuit held that this evidence was relevant in proving that the currency was tainted by narcotics, *i.e.*, that it was "proceeds of specified unlawful activity."[7] Obviously, this evidence would not be

[7] The Eleventh Circuit suggested that proving that the money is the proceeds of specified unlawful activity is not an essential element of money laundering. See *United States v. Ospina*, 798 F.2d at 1583 ("This evidence need not be 'conclusive of a material issue in order to be admitted.' ").

sufficient to sustain a conviction for distribution of cocaine; however, it is sufficient to prove that the money was "proceeds of specified unlawful activity." *Id.* Similarly, evidence that the person producing the money that was laundered had no legitimate source of income has been considered relevant to proving that the money was "proceeds of specified unlawful activity." See, *e.g.*, *United States v. Isabel*, 945 F.2d 1193, 1202 (1st Cir. 1991).

A prosecution under 18 U.S.C. § 922, felon in possession of a firearm,[8] illustrates the fallacy of Petitioner's argument. Without question, such a prosecution requires the United States to prove that the defendant is a felon – a status or a categorical delineation. Just because the status of being a felon is an "essential element of the offense," it does not follow that venue is proper based solely on where the underlying original felonious acts occurred. The same analysis would hold true to other criminal offenses that contained a similar status or categorical delineation as an element of the crime.

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[8] The venue issue presented by the hypothetical is actually more appealing than the one presented by the instant case because the crime of felon in possession requires the defendant to have committed the underlying felony whereas the offense of money laundering does not require the defendant to have committed the underlying "specified unlawful activity." Petitioner recognizes this shortcoming in its argument when it attempts to analogize the money laundering offenses to the general conspiracy statute, 18 U.S.C. § 371. Petition, 13. The issue presented by the Petition, of course, does not involve any conspiracy allegations, and Petitioner's attempt to turn an individual money laundering count into a conspiracy by permitting venue to be based on the underlying criminal activity of another person must be rejected.

In proving that the money in question "involves the proceeds of specified unlawful activity," it is irrelevant *who* committed the underlying illegal activity, specifically *when* it was committed, *where* it was committed, or *how* it was committed – the government must simply show that the money in question "involves the proceeds of specified unlawful activity." See *United States v. Gabel*, 85 F.3d 1217, 1224 (7th Cir. 1996) ("The particular nature or time of those earlier crimes is immaterial.); *United States v. Ospina*, 798 F.2d 1570 (11th Cir. 1986) (no allegation that defendant participated in underlying illegal activity, but defendant nonetheless convicted of money laundering). In *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995), the court stated:

> The core of money laundering, which distinguishes one such offense from another, is the laundering transaction itself. Because the requirement that the funds be illegally derived is not the distinguishing aspect and therefore does not lie at the core of the offense, details about the nature of the unlawful activity underlying the character of the proceeds need not be alleged.

The court concluded that "[j]ust because the statute requires that funds be obtained from '*specified*' unlawful activity does not mean that the government is required to detail the circumstances of the unlawful activity." *Id.* (emphasis in original).

United States v. Gabel, 85 F.3d 1217 (7th Cir. 1996), illustrates the above points of law. In *Gabel*, the court considered the issue of whether a conviction was within fifteen years of a money laundering offense to justify a

three-level increase in the defendant's criminal history under the sentencing guidelines. *Id.* at 1222. The government argued that the "specified unlawful activity" that generated the proceeds that was laundered was part of the instant money laundering offense, and thus, the government argued that the money laundering offense was within fifteen years of the previous offense for sentencing purposes. *Id.* at 1223-1224. In rejecting this argument, the court stated:

> [Money laundering] focuses on the conversion of the fruits of the earlier crimes into other, presumably less detectable, forms. The particular nature or time of those earlier crimes is immaterial. Only when the effort to conduct the financial transaction described by the statute begins does the relevant conduct commence for money laundering itself. Before that, an individual has simply committed burglary, drug dealing, bank robbery, or any of the myriad illegal activities that might lead to ill-gotten wealth. (citations omitted). While the statute requires that the money laundered be the fruit of an illegal act, there is no requirement that the government link the money laundered to a specific criminal act. Thus, the commission of the illegal acts cannot be considered the "commencement" of the charged offense. We therefore conclude that the burglaries and thefts to which Gabel admitted, which took place from 1988 until his arrest, do not constitute relevant conduct for the structuring or money laundering offenses.

Id. at 1224. In summary, Petitioner's argument, reduced to its simplest terms, is that money laundering begins with

the "specified unlawful activity" and ends with the prohibited financial transaction. The above-cited authority clearly demonstrates that this is not the law.

B. Petitioner's contention that Respondent's conduct constituted a "continuing offense" is misplaced.

Because Petitioner ignores that money laundering is a separate and distinct crime that follows in time the "specified unlawful activity," see Section D, *infra*, and ignores that the underlying criminal conduct is not an element of money laundering, see Section A, *supra*, Petitioner erroneously concludes that money laundering is a "continuing offense" for purposes of 18 U.S.C. § 3237(a). This erroneous conclusion is premised on the erroneous assumption that money laundering begins with the "specified unlawful activity" and ends with the prohibited financial transaction. As shown above, this is clearly not, nor should it be, the law.

The facts of the instant case do not warrant a "continuing offense" analysis. Respondent was not charged with the underlying illegal activity – the source of the money that was laundered. Respondent was charged with certain crimes that involved certain financial transactions that occurred in one place at one time. Venue must be decided on the charges that the government has filed. Anything else would make a mockery of the constitutional provisions, statutes,[9] and court rules[10] that ensure a defendant the right to be tried where the alleged crime

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[9] See, *e.g.*, 28 U.S.C. § 1114.

[10] See, *e.g.*, FED. R. CRIM. P. 18.

was committed. The "continuing offense" analysis is wholly inappropriate when the alleged conduct that constituted the offense spanned only several minutes in a Florida bank.

Considering the offenses charged, the Eighth Circuit was correct in holding that Respondent "was not accused of a 'continuing offense.' She was charged with money laundering, for transactions which began, continued, and were completed only in Florida." App., Petition, 4a.

C. *United States v. Anderson*, 328 U.S. 699 (1946), controls the issue before this Court.

Because the criminal statutes under which Respondent was charged do not contain specific venue provisions, it is necessary and proper to apply the test derived from *United States v. Anderson*, 328 U.S. 699 (1946). The test analyzes the statute defining the crime and focuses on the verbs, key terms, and policies underlying the statute to determine the site or sites of the offense and thus where venue lies. *Id.* at 705.

In deciding where an offense was committed and thus where venue lies, *Anderson* explains that "the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *Anderson*, 328 U.S. at 703. This requires an analysis of the operative verbs, key terms, and policies underlying the statute defining the offense. *United States v. Griffin*, 814 F.2d 806, 810 (1st Cir. 1987); *United States v. Medina-Ramos*, 834 F.2d 874, 876 (10th Cir. 1987); c.f. *Anderson*, 323 U.S. at 705 ("It is . . . necessary . . . to decide . . . what acts of the defendant constituted the violation."). When one

analyzes the operative verbs, key terms, and policies underlying the statute defining the offense, it becomes abundantly clear that, in the instant case, venue is in Florida, not the Western District of Missouri.

For example, in Count II of the indictment, see App., Petition, 19a-20a, charged Respondent with a violation of 18 U.S.C. § 1956(a)(1)(B)(ii), making it a crime to "knowing[ly] . . . conduct[ ] or attempt[ ] to conduct . . . a financial transaction which . . . involves the proceeds of specified unlawful activity . . . knowing that the transaction is designed in whole or in part . . . to avoid a transaction reporting requirement under State or Federal law." Clearly, the key terms in the statute, and thus, where the crime is committed, is where the defendant "conducts or attempts to conduct a financial transaction." While there are intent elements to the crime ("to avoid a transaction reporting requirement under State or Federal law" and "knowing that the property involved in [the transaction] represents the proceeds of some form of unlawful activity"), these elements are not the "acts of the defendant [that] constitute[ ] the violation." *Anderson*, 323 U.S. at 705. Similarly, proving the status or categorical delineation of the money that is laundered, *i.e.*, that it "in fact involves the proceeds of specified unlawful activity," 18 U.S.C. § 1956(a)(1), is not the "acts of the defendant [that] constitute[ ] the violation." *Anderson*, 323 U.S. at 705, and is therefore not relevant for purposes of determining venue. *Id.* It is clear that what was charged in Count II of the indictment occurred in Florida. The alleged conduct which constituted the crime began and ended in a Florida bank on January 23, 1991. The Eighth Circuit correctly held that venue is not proper in the

Western District of Missouri for Count II. App., Petition, 9a.

The same analysis can be applied to Count III. Count III of the indictment, See App., Petition, 20a, charged Respondent with a violation of 18 U.S.C. § 1957(a), which makes it a crime to "knowingly engage[ ] or attempt[ ] to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity." Like a prosecution under section 1956(a)(1), the status or categorical delineation of the money involved in the prohibited transaction, *i.e.*, that it is "criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity," is not the element of the crime that is the "acts of the defendant [that] constitute[ ] the violation." *Anderson*, 323 U.S. at 705, and is therefore not relevant for purposes of determining venue. *Id.* Rather, venue is proper in the district where the defendant "knowingly engages or attempts to engage in a monetary transaction." It is clear that what was charged in Count III occurred in Florida. The alleged conduct which constituted the crime began and ended in a Florida bank on January 22, 1991. The Eighth Circuit correctly held venue does not lie in the Western District of Missouri for Count III. App., Petition, 9a.

Under *United States v. Anderson*, 328 U.S. 699 (1946), Respondent "was not accused of a 'continuing offense.' She was charged with money laundering, for transactions which began, continued, and were completed only in Florida." App., Petition, 4a. The Eighth Circuit correctly found that "[t]he only acts which formed the basis for the money-laundering charges in the instant case consisted of

banking transactions which [Respondent] executed only in Florida. Under these facts . . . the District Court correctly dismissed Counts II and III as improperly venued in Missouri." App., Petition, 9a.

D. Money Laundering is a separate and distinct crime from the "specified unlawful activity" to which the statute refers.

The money laundering statutes create a separate crime, separately punishable, from the underlying criminal activity.[11] *United States v. Heaps*, 39 F.3d 479, 486 (4th Cir. 1994). See also *United States v. Edgmon*, 952 F.2d 1206, 1213 (10th Cir. 1991), *cert. denied*, 505 U.S. 1223, 112 S.Ct. 3037, 120 L.Ed.2d 906 (1992) ("Congress appears to have intended the money laundering statute to be a separate crime distinct from the underlying offense that generated the money to be laundered."). The crime of money laundering, by definition, cannot occur until after the completion of the underlying "specified unlawful activity." 18 U.S.C. § 1956(a)(1); *United States v. Edgmon*, 952 F.2d at 1213-1214 ("Congress aimed the crime of money laundering at conduct that follows in time the underlying crime rather than to afford an alternative means of punishing the prior 'specified unlawful activity.' "); *United States v.*

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[11] Without disputing this important point of law, Petitioner nonetheless argues that venue in a money laundering prosecution can be based on the acts that comprise this separate and distinct crime.

Savage, 67 F.3d 1435, 1441 (9th Cir. 1995) ("Congress considered money laundering to be separate conduct occurring after completion of the underlying criminal offense."). Indeed, in *United States v. Dimeck*, 24 F.3d 1239, 1246 (10th Cir. 1994), the Court recognized that it "stressed in *Edgmon* that a violation of § 1956(a)(1)(B)(i) must 'follow in time' the completion of the underlying" unlawful activity. This analysis is also true to a section 1957 violation. See *Edgmon*, 952 F.2d at 1442 ("we conclude that 'criminally derived property' under § 1957 is equivalent to 'proceeds' under § 1956, *i.e.*, funds obtained from prior, separate criminal activity."); *United States v. Johnson*, 971 F.2d 562, 569-570 (10th Cir. 1992) ("criminally derived property" is the proceeds from an underlying criminal offense obtained by the defendant before the defendant engages in the monetary transaction prohibited by section 1957).

E. The question of proper venue raises deep issues of public policy.

In *United States v. Johnson*, 323 U.S. 273, 275 (1944), this Court stated:

> Aware of the hardship to which a trial in an environment alien to the accused exposes him, the Framers wrote into the Constitution that "The Trial of all Crimes . . . shall be held in the State where said crimes have been committed. . . . " Article III, § 2, cl. 3. As to underscore the importance of this safeguard, it was reinforced by the provision of the Bill of Rights requiring trial "by an impartial jury of the State and District wherein the crime shall have been committed." Sixth Amendment.

Recognizing the importance of these two constitutional provisions,[12] this Court stated:

> These are matters that touch closely the fair administration of criminal justice and public confidence in it, on which it ultimately rests. These are important factors in any consideration of the effective enforcement of the criminal law. . . . Questions of venue in criminal cases, therefore, are not merely matters of formal legal procedure. They raise deep issues of public policy in the light of which legislation must be construed.

Id. at 276.

This Court has warned against an expansive interpretation of venue, which could lead to needless hardship on the defendant who is forced to defend herself far from home and available defense resources, as well as "the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution." *Id.* at 275; *Travis v. United States*, 364 U.S. 631, 634 (1961) ("We are also aware that venue provisions in Acts of Congress should not be so freely construed as to give

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[12] The 1979 Committee Notes to FED R. CRIM. P. 18 explain the difference between these two constitutional provisions: Article III, § 2, clause 3 of the United States Constitution places venue (the geographical location of the trial) "in the State where the said Crimes shall have been committed," while the Sixth Amendment defines the vicinage (the geographical location of the jurors) as "the State and district wherein the crime shall have been committed, which district shall have previously been ascertained by law."

the Government the choice of 'a tribunal favorable' to it."). These constitutional provisions and the cases interpreting them guarantee a defendant an absolute right to be tried by an impartial jury of her peers where the crime was committed.

CONCLUSION

The Eighth Circuit correctly decided the issue presented by the Petition. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN W. ROGERS
Attorney for Respondent

APPENDIX

UNITED STATES of America, Appellant,

v.

Vickie S. CABRALES, Appellee.

No. 96-3080.

United States Court of Appeals,
Eighth Circuit.

June 12, 1997.

On Appeal from the United States District Court for the Western District of Missouri.

Before RICHARD S. ARNOLD, Chief Judge, ROSS and BEAM, Circuit Judges.

ORDER

Vickie Cabrales has petitioned this panel to amend its opinion in *United States v. Cabrales*, 109 F.3d 471 (8th Cir.1997). Though Cabrales prevailed in that case, she is concerned that a phrase contained in one of the footnotes of the opinion may adversely affect her in a criminal case which remains pending against her. See *id.* at n. 2. The footnote is merely an explanatory one, and should have no effect on another court's decision. Likewise, however, it is not necessary to the holding nor to the reasoning of the opinion itself, and we therefore amend the opinion to ensure that no incorrect inferences are drawn from it.

Accordingly, we order that footnote two of the opinion be amended to read: "The Court did not dismiss Count I, the conspiracy charge. Count I is not part of this appeal."

It is so ordered.

Supreme Court, U.S.
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(3)

No. 97-643

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY MEMORANDUM FOR THE UNITED STATES

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6 pp

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Although respondent defends the judgment of the court of appeals, she acknowledges that the court's decision in this case conflicts with decisions of at least three other circuits. See Br. in Opp. 2-3 & nn.2-4.[1] That conflict warrants this Court's resolution. In

[1] We also believe that the court of appeals' decision in this case conflicts with the Fourth Circuit's decision in *United States* v. *Heaps*, 39 F.3d 479, 482 (1994). See Pet. 9-10, 12. Respondent correctly observes (see Br. in Opp. 2 n.1) that the defendant in *Heaps* moved for a change of venue pursuant to Federal Rule of Criminal Procedure 21(b) (rather than to dismiss the indictment, or the money laundering counts in it, on the basis of improper venue). Respondent's assertion (Br. in Opp. 2 n.1), however, that venue in *Heaps* was conceded to be proper in the Eastern District of Virginia, where the defendant was tried, is incorrect. The defendant in *Heaps* "asserted that since all activity conducted by him in furtherance of the crimes charged occurred in New York, he should not have had to stand trial in the Eastern District of Virginia." 39 F.3d at

any event, respondent's arguments on the merits are unpersuasive.

1. Respondent contends (see Br. in Opp. 9-10, 13-14) that venue in a money laundering prosecution may not be based on the location where the tainted funds were derived because the money laundering offense is a separate and distinct crime from the "specified unlawful activity" that generated the illicit proceeds. In certain respects, money laundering is an offense distinct from the underlying "specified unlawful activity." Respondent could, for example, be convicted of money laundering without proof that she personally assisted in the drug trafficking activities that produced the funds in question. And even where a defendant *is* convicted of the predicate "specified unlawful activity," a conviction for money laundering requires proof of additional elements beyond those necessary for conviction of the predicate crime. But money laundering does require proof of the specified unlawful activity that generated the funds.

As the petition explains (see Pet. 5, 9, 12, 14), the money laundering offenses described in 18 U.S.C. 1956(a)(1)(B)(ii) and 1957(a) contain an element that the funds in question were the product of "specified unlawful activity," and that the defendant knew the

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482. Because the money laundering counts were predicated on a wire transfer of funds from Washington, D.C., to New York, see *id.* at 482, 483, the propriety of venue in the Eastern District of Virginia necessarily rested on the proposition that "venue for a money laundering case is proper in any district in which the specified unlawful activity occurs," *id.* at 482 (citing *United States* v. *Beddow*, 957 F.2d 1330, 1336 (6th Cir. 1992)). That proposition was, in turn, essential to the *Heaps* court's holding (see *id.* at 482-483) that the district court had not abused its discretion in denying the defendant's motion for change of venue.

funds to have been unlawfully derived. Respondent contends that "[t]he alleged conduct which constituted the crime began and ended in a Florida bank," Br. in Opp. 11; see also Pet. App. 4a (stating that respondent was indicted "for transactions which began, continued, and were completed only in Florida"). The banking transactions in which respondent engaged, however, would not have violated Section 1956(a)(1)(B)(ii) or 1957(a) if the funds in question had been acquired through lawful means. The crime of money laundering is therefore properly regarded, for purposes of the relevant constitutional and statutory venue provisions, as having been committed in part in the district where the tainted funds were generated. See, *e.g.*, *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916) ("where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done").

2. Respondent contends (Br. in Opp. 10-13) that *United States* v. *Anderson*, 328 U.S. 699 (1946), compels rejection of the government's position. She relies in particular on the *Anderson* Court's statement that the determination of proper venue depends in part on "what acts of the defendant constituted the violation." *Id.* at 705. The Court in *Anderson* had no occasion, however, to address the situation in which a defendant's liability under a criminal statute may depend in part upon the commission of unlawful acts by any person, including a person other than the defendant. *Anderson* cannot plausibly be read to establish a per se rule that criminal prosecutions must *always* be brought in a district where the defendant himself committed an element of the charged offense. As we note in the petition (see Pet. 13), for example, it is well established that venue in a

conspiracy prosecution under 18 U.S.C. 371 is proper in any district in which an overt act in furtherance of the conspiracy was committed by *any* of the conspirators.

3. Finally, respondent contends (Br. in Opp. 14-16) that the determination of proper venue in a criminal prosecution implicates important issues of public policy. The dual constitutional provisions governing venue in federal criminal prosecutions (see U.S. Const. Art. III, § 2, Cl. 3; Amend. VI) do attest to the significant values underlying the venue requirement. As this Court has recognized, however, "the geography prescribed is the district or districts within which the offense is committed," which "may or may not be the place where the defendant resides." *Anderson*, 328 U.S. at 705. Accord, *e.g.*, *Armour Packing Co.* v. *United States*, 209 U.S. 56, 76 (1908) ("The constitutional requirement is as to the locality of the offense and not the personal presence of the offender."). The possibility that a criminal defendant will be "forced to defend herself far from home" (Br. in Opp. 15) is thus inherent in the constitutional scheme.

4. The Court's resolution of this case is not only warranted to resolve a circuit conflict involving the money laundering statutes, but also to clarify principles governing venue in prosecutions brought under other federal criminal statutes. For example, a circuit conflict currently exists with respect to proper venue in prosecutions under 18 U.S.C. 924(c)(1), which imposes criminal penalties on any person who uses or carries a firearm during and in relation to a crime of violence or drug trafficking crime. Compare *United States* v. *Pomranz*, 43 F.3d 156, 159-162 (5th Cir.) (venue in a Section 924(c)(1) prosecution is

proper in any district where the underlying drug or violent crime occurred, even if the defendant did not use or carry a firearm in that district), cert. denied, 116 S. Ct. 513 (1995), with *United States* v. *Palma-Ruedas*, 121 F.3d 841, 847-851 (3d Cir. 1997) (venue for Section 924(c)(1) count was not proper in New Jersey because the defendant did not use or carry the firearm there, notwithstanding the fact that venue was proper in New Jersey for the predicate kidnapping charges).[2]

The government's position in the instant case rests on the proposition that, in the absence of statutory language specifying a contrary rule, venue in a federal criminal prosecution is generally proper in any district where an essential element of the criminal activity in the offense was committed. That position, if adopted by this Court, would illuminate and clarify the determination of venue with respect to many comound federal crimes. Given the importance of such offenses in the federal system (*e.g.*, Continuing Criminal Enterprise, 21 U.S.C. 848; RICO, 18 U.S.C. 1962), the venue question in this case should be resolved by this Court.

* * * * *

For the reasons stated above, and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

DECEMBER 1997

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[2] The government is currently considering whether to file a petition for a writ of certiorari in *Palma-Ruedas*.

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v.

VICKIE S. CABRALES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED

Whether venue in a prosecution for money laundering under 18 U.S.C. 1956 and 1957 is proper in the district where the illicit funds were generated, when the defendant's unlawful financial transactions occurred in another district.

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In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-643

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 109 F.3d 471. A subsequent amendment to that opinion (Br. in Opp. App. 1) is reported at 115 F.3d 621. The order of the district court (Pet. App. 10a-12a) is unreported. The report, recommendation, and order of the magistrate (Pet. App. 13a-16a) is unreported.

JURISDICTION

The court of appeals entered its judgment on March 24, 1997. A petition for rehearing was denied on June 12, 1997. Pet. App. 21a. On September 5, 1997, Justice Thomas extended the time for filing a petition for a writ of certiorari to and including October 10, 1997. The petition was filed on October 10, 1997, and was

granted on January 16, 1998. 118 S. Ct. 751. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE INVOLVED

1. Article III, Section 2, Clause 3 of the United States Constitution provides as follows:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

2. The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. Section 1956(a)(1) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction

> which in fact involves the proceeds of specified unlawful activity —
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> * * * * *
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> (B) knowing that the transaction is designed in whole or in part —
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> (ii) to avoid a transaction reporting requirement under State or Federal law,
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> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

4. Section 1957(a) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever * * * knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

5. Section 3237(a) of Title 18, United States Code, provides as follows:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

> Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

6. Rule 18, Federal Rules of Criminal Procedure, provides as follows:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

STATEMENT

1. Respondent Vickie Cabrales was charged in the Western District of Missouri in a three-count indictment. See Pet. App. 17a-20a. Count I alleged that respondent in that district and elsewhere had conspired to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 371. Pet. App. 18a-19a. Count II alleged that respondent in that district and elsewhere had conducted a financial transaction to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 1956(a)(1)(B)(ii). Pet. App. 19a-20a. Count III alleged that respondent in that district and elsewhere had engaged in a monetary transaction in criminally derived property of a value greater than $10,000, in violation of 18 U.S.C. 1957. Pet. App. 20a. The

indictment alleged that respondent had first deposited a monetary instrument in the amount of $40,000 with the AmSouth Bank of Florida, see *ibid.*, and had shortly thereafter made four separate withdrawals of $9,500 each from the same bank, see *id.* at 19a. The indictment also alleged that the funds in question were derived from "the knowing and intentional distribution of cocaine, a Schedule II controlled substance." *Id.* at 18a, 19a, 20a.

The money laundering offenses described in Sections 1956(a)(1)(B)(ii) and 1957(a) require proof that the funds in question were the product of "specified unlawful activity," and that the defendant knew the funds to have been unlawfully derived. See 18 U.S.C. 1956(a)(1) (statute applies only if the defendant "know[s] that the property involved in a financial transaction represents the proceeds of some form of unlawful activity," and the transaction "in fact involves the proceeds of specified unlawful activity"); 18 U.S.C. 1957(a) (statute applies to person who "knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity"). The term "specified unlawful activity" is defined by 18 U.S.C. 1956(c)(7) and includes "the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act)." 18 U.S.C. 1956(c)(7)(B)(i). See also 18 U.S.C. 1957(f)(3) (for purposes of Section 1957, the term "specified unlawful activity" has the same meaning as in Section 1956).

2. Respondent moved to dismiss the indictment on the ground of improper venue. The case was referred to a magistrate judge, who recommended that respon-

dent's motion be denied as to Count I (the conspiracy charge) and granted as to Counts II and III. Pet. App. 13a-16a. The magistrate judge observed that "[v]enue is proper in a district where the crime was committed." *Id.* at 13a. With respect to the money laundering offenses alleged in Counts II and III, the magistrate judge explained that "[t]he deposit and withdrawals occurred in the State of Florida" and that "[n]o activity of money laundering is alleged to have occurred in Missouri." *Id.* at 14a. On that basis, he concluded that venue for the money laundering charges was improper in the Western District of Missouri. *Ibid.* In so doing, the magistrate judge rejected the government's contention that venue was proper because the drug sales from which the funds were derived had occurred in that district. See *ibid.*[1]

The magistrate judge then addressed the conspiracy charge. He observed that "[v]enue is proper in a conspiracy case 'in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.'" Pet. App. 14a (quoting *United States* v. *Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996)).

[1] In October of 1992, respondent's mother, brother, and husband were convicted of participating in a cocaine distribution conspiracy operating in the Western District of Missouri and elsewhere. Gov't C.A. Br. 1-2. Respondent's mother and brother appealed, and their convictions and sentences were affirmed; respondent's husband did not appeal. *Id.* at 2 & n.1. In opposing respondent's motion to dismiss the money laundering charges at issue here, the government submitted to the magistrate judge its appellate brief from the prior case, which described in detail the evidence of illegal narcotics trafficking activities in the Western District of Missouri. See Gov't Response in Opposition to Defendant's Motion to Dismiss for Lack of Proper Venue, Attach. B (filed June 4, 1996).

Relying on the government's representation that respondent "was present in Missouri during the conspiracy, lived with a conspirator in Missouri, and participated in various activities in Missouri in furtherance of the conspiracy," *id.* at 14a-15a, the magistrate judge recommended that respondent's motion to dismiss the indictment be denied with respect to Count I, *id.* at 15a.

The district court adopted the recommendation of the magistrate judge and ordered that respondent's motion to dismiss the indictment for improper venue be denied as to Count I and granted as to Counts II and III. Pet. App. 10a-12a.

3. The court of appeals affirmed the district court's dismissal of Counts II and III of the indictment. Pet. App. 1a-9a.[2]

The court of appeals observed that "[b]oth Rule 18 of the Federal Rules of Criminal Procedure and the Constitution require that a person be tried for an offense where that offense is committed," and that the site of a charged offense "must be determined from the nature of the crime alleged and the location of the act or acts constituting it." Pet. App. 3a (quoting *United States* v. *Anderson*, 328 U.S. 699, 703 (1946)). The court acknowledged that, "[w]ere the location of the underlying criminal conduct, standing alone, sufficient to confer venue on a district, the money-laundering charges against [respondent] would be appropriately venued in Missouri." Pet. App. 6a n.4. The court also recognized that "[u]nder 18 U.S.C. 3237(a), 'continuing offenses' are deemed committed,

[2] Respondent did not appeal the district court's denial of her motion to dismiss with respect to Count I of the indictment. See Br. in Opp. App. 1.

and venue over those offenses is therefore proper, 'in any district in which such offense was begun, continued, or completed.'" *Id.* at 4a.

The court held, however, that respondent "was not accused of a 'continuing offense'" because the financial transactions in which she engaged "began, continued, and were completed only in Florida." Pet. App. 4a. In the court of appeals' view, the fact "[t]hat the money came from Missouri is of no moment in this case, because [respondent] dealt with it only in Florida." *Ibid.* The court also stated: "Counts II and III include no act committed by [respondent] in Missouri. Nor does the government charge that [respondent] transported the money from Missouri to Florida. Whether that would make a difference we need not decide in the present case." *Ibid.* The court concluded that venue was not proper in the Western District of Missouri because "[t]he only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which [respondent] executed only in Florida." *Id.* at 9a.

SUMMARY OF ARGUMENT

A. The relevant constitutional and statutory provisions state that a criminal defendant must be tried in a district where the offense was "committed." Congress and this Court have long recognized that a single offense may be committed in more than one location, and that "where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916). The current statutory provision governing venue for multidistrict offenses, 18 U.S.C. 3237(a), reaches to

the limits of the Constitution and permits a federal criminal prosecution to be brought in any district in which the offense was "committed"—*i.e.*, "any district in which such offense was begun, continued, or completed."

B. The money laundering offenses alleged in the indictment were "committed," for purposes of the constitutional and statutory provisions governing venue in federal criminal cases, in, *inter alia*, the Western District of Missouri, because the charged offenses were "begun" in that district through the production of funds by means of drug trafficking activity. Proof that the laundered funds were the product of specified unlawful activity is an essential element of the offenses described in 18 U.S.C. 1956 and 1957. The central purpose of those money laundering provisions, moreover, is to expose and deter "specified unlawful activity" by proscribing the financial machinations that facilitate profitable, undetected commission of the predicate crimes.

The fact that respondent's deposit and withdrawals are alleged to have occurred in Florida does not mean that her money laundering offenses were committed only in that location. In a variety of circumstances, venue in a federal criminal case has been held proper despite the absence of evidence that the defendant was ever physically present in the district where the prosecution was brought. It is clear, in particular, that a federal crime can be "committed," for purposes of constitutional and statutory venue provisions, in a district where an element of the offense has been performed by some person other than the defendant. Because the predicate "specified unlawful activity" that is an element of the charged money laundering offenses occurred in the Western District of Mis-

souri, that district is a proper venue for the instant prosecution.

C. Permitting money laundering offenses to be prosecuted in the district where the "specified unlawful activity" occurred furthers the purposes underlying the requirement that a criminal prosecution be brought in the district where the offense was committed. The relevant constitutional and statutory venue provisions serve, first and foremost, to protect the ability of an accused person to mount a vigorous defense by increasing the likelihood that relevant evidence can be discovered and produced at trial. In many money laundering prosecutions, the principal issue in dispute is likely to be the origin of the funds involved in the pertinent financial transactions, rather than the fact of the transactions or the defendant's responsibility for them. A requirement that money laundering charges be brought only in the district where the defendant's financial transactions are alleged to have occurred would often foreclose trial in the district where evidence of the predicate specified unlawful activity is most readily available. Such a rule would impair the efficient conduct of such prosecutions (by hindering the government's ability to try money laundering counts together with charges for the predicate crimes) without contributing in any substantial or consistent way to the accused's ability to present an effective defense.

The requirement that a criminal case be tried in the district where the crime was committed also serves to ensure that the administration of the criminal justice system is visible and responsive to the victimized community. The money laundering offenses proscribed by 18 U.S.C. 1956 and 1957 are harmful because they facilitate the profitable com-

mission of "specified unlawful activity." The community in which the predicate crimes occurred is therefore the community most directly victimized by violations of the money laundering statute.

ARGUMENT

RESPONDENT WAS PROPERLY CHARGED WITH MONEY LAUNDERING IN THE WESTERN DISTRICT OF MISSOURI, THE SITE OF THE "SPECIFIED UNLAWFUL ACTIVITY" THAT GENERATED THE LAUNDERED FUNDS

A. A Criminal Offense Committed In More Than One District May Ordinarily Be Prosecuted In Any District Where It Was Committed

The applicable constitutional and statutory provisions require that a criminal defendant be tried in the State and district in which the offense "shall have been committed." U.S. Const. Art. III, § 2, Cl. 3; Amend. VI; 18 U.S.C. 3237(a); Fed. R. Crim. P. 18; pp. 2-3, *supra*. One commentator has observed:

> Strictly speaking [Article III, § 2, Cl. 3] is a venue provision, since it fixes the place of trial, while the [Sixth Amendment] is a vicinage provision, since it deals with the place from which the jurors are to be selected. This technical distinction has been of no importance. Although in theory both constitutional provisions could be satisfied by trying a defendant in one district of a state though the offense was committed in another district, so long as the jurors were selected from the district of the crime, no such procedure has ever been attempted, and it has been considered that trial in the district of the offense is required.

2 Charles A. Wright, *Federal Practice and Procedure* § 301, at 190 (2d ed. 1982) (footnotes omitted). As this court noted in *United States* v. *Anderson*, 328 U.S. 699, 704-705 (1946), "[t]he constitutional specification is geographic; and the geography prescribed is the district or districts within which the offense is committed." Absent a specific statutory provision defining the place or places at which venue will be proper, "the Court must base its determination on 'the nature of the crime alleged and the location of the act or acts constituting it.'" *United States* v. *Cores*, 356 U.S. 405, 408 (1958) (quoting *Anderson*, 328 U.S. at 703). See also, *e.g.*, *Platt* v. *Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 245 (1964); *Travis* v. *United States*, 364 U.S. 631, 636 (1961); *United States* v. *Midstate Horticultural Co.*, 306 U.S. 161, 165-166 (1939); *Johnston* v. *United States*, 351 U.S. 215, 220-221 (1956); *United Staes* v. *Lombardo*, 241 U.S. 73, 77 (1916).

Under the common law, each criminal offense was deemed to have a single situs. 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 2.9, at 180 (1986). "In other words, the common law picked out one particular act (or omission) or result of the act (or omission) as vital for the determination of the place of commission (i.e. the situs) of each of the various crimes." *Ibid.* Congress and this Court have long recognized, however, that the Constitution does not mandate such a restrictive approach. As early as 1867, Congress recognized the concept of a criminal offense "begun in one judicial district of the United States and completed in another." Act of March 2, 1867, ch. 169, § 30, 14 Stat. 484. The 1867 Act provided that "every such offence shall be deemed to have been committed in either of the said districts, and may be

dealt with, inquired of, tried, determined and punished in either of the said districts, in the same manner as if it had been actually and wholly committed therein." *Ibid.*[3] This Court has repeatedly recognized that a single offense may be committed in more than one district and may be tried (absent a contrary statutory directive) in any district where it was committed. See, *e.g.*, *Anderson*, 328 U.S. at 705 ("the geography prescribed is the district or districts within which the offense is committed"). As this Court stated in *Lombardo*: "Undoubtedly where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." 241 U.S. at 77.

The general venue statute governing multidistrict offenses provides that "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in *any* district in which such offense was begun, continued, or completed." 18 U.S.C. 3237(a) (emphasis added). The breadth of the statutory language indicates that Congress intended Section 3237(a) to permit a federal prosecution to be brought in any district authorized by the Constitution. The 1948 Reviser's Note confirms that reading, explaining that "[t]he revised section removes all doubt as to the venue of continuing offenses and makes unnecessary special venue provisions except in cases where Congress desires to restrict the pro-

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[3] The current venue statute also authorizes the prosecution to be brought in any district where the crime was "continued," as well as in the districts where it was "begun" or "completed." 18 U.S.C. 3237(a).

secution of offenses to particular districts." 18 U.S.C. 3237 note.[4]

B. The Offense Of Money Laundering Is "Committed" In Part In The State And District Where The Predicate "Specified Unlawful Activity" Occurred

The money laundering offenses alleged in this case were committed, for purposes of the constitutional and statutory venue provisions, in, *inter alia*, the Western District of Missouri. An essential element of the offenses described in 18 U.S.C. 1956 and 1957 is that the laundered funds were the product of specified unlawful activity. Indeed, Congress has criminalized money laundering precisely because it facilitates the profitable commission of the underlying offenses. The fact that respondent was not charged with participation in the underlying narcotics crimes, and

[4] The Reviser's Note also states that the second paragraph of Section 3237(a), which deals with offenses involving use of the mails or transportation in interstate commerce, "was added to meet the situation created by the decision of [this Court] in *United States v. Johnson*," 323 U.S. 273 (1944). 18 U.S.C. 3237 note. The Court in *Johnson* held, as a matter of statutory construction, that a person charged with "us[ing] the mails" to deliver dentures constructed by an unlicensed person in violation of the Federal Denture Act could be prosecuted only in the district where the dentures were deposited in the mail. 323 U.S. at 274-278. The Court acknowledged, however, that "Congress may constitutionally make the practices which led to the Federal Denture Act triable in any federal district through which an offending denture is transported." *Id.* at 274. The subsequent amendment of Section 3237(a) supersedes the *Johnson* Court's statutory analysis and reflects Congress's intent to permit federal prosecutions to be brought in any district permitted by the Constitution, absent a specific statutory provision establishing more limited venue for a particular class of cases.

that the financial transactions in which she is alleged to have engaged occurred entirely in Florida, does not prevent the government from prosecuting her in the district where the drug trafficking occurred. In a variety of contexts, this Court and the lower federal courts have recognized that an offense has been "committed" in a particular district even though the defendant has not been shown to have personally performed any unlawful act, or indeed to have been physically present, in the district where the prosecution is brought.

1. The banking transactions in which respondent engaged would not have violated Section 1956(a)(1)(B)(ii) or 1957(a) if the funds in question had been acquired through lawful means. To obtain a conviction under either provision, the government must prove beyond a reasonable doubt both that the funds in question were the product of "specified unlawful activity" and that respondent knew the money to have been unlawfully derived. See p. 5, *supra*. The unlawful derivation of the laundered funds is therefore an essential element of the money laundering offense. Because a criminal "offense" is typically defined by reference to the elements that must be proved at trial, cf., *e.g.*, *United States* v. *Dixon*, 509 U.S. 688, 696-703 (1993), as a general matter, an "offense" is "committed"—*i.e.*, "begun, continued, or completed," 18 U.S.C. 3237(a)—in every district where conduct establishing an element of the crime occurs. See *Lombardo*, 241 U.S. at 77 ("where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done"). And because the conduct establishing that essential element occurred in the Western District of Missouri, the charged

offenses were quite literally "begun" in that district and venue was proper there.

In the context of particular federal statutes, the location of the acts establishing a particular element may not reasonably be regarded as an appropriate forum for prosecution of the offense.[5] The instant case, however, does not present such a situation. The existence of "specified unlawful activity" is hardly a peripheral element of the crime of money laundering. To the contrary, the existence of "specified unlawful activity" is at the heart of the offenses defined by Sections 1956 and 1957, since exposure and deterrence of the predicate criminal activity is the central purpose of the money laundering prohibition.

Congress viewed money laundering as a logical and prevalent outgrowth of the specified unlawful activities. The Senate Report accompanying the 1986 legislation enacting Sections 1956 and 1957 explained:

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[5] For example, 18 U.S.C. 922(g)(1) makes it a federal crime for a person previously convicted of a felony to "possess in or affecting commerce, any firearm or ammunition." This Court has construed the statute to require only "the minimal nexus that the firearm have been, at some time, in interstate commerce," *Scarborough* v. *United States*, 431 U.S. 563, 575 (1977) —an element typically established by proof that the firearm was manufactured in a State other than that in which the felon was found in possession of it. It does not necessarily follow, however, that venue in a prosecution under Section 922(g) is appropriate in the district where the firearm was manufactured. Cf. *Travis* v. *United States*, 364 U.S. 631, 635 (1961) (prosecution for filing a false affidavit with the National Labor Relations Board could be prosecuted only in the district where affidavits were filed, not where they were executed and mailed, because "[t]here would seem to be no offense, unless petitioner completed the filing in the District of Columbia").

> Money laundering is a crucial financial underpinning of organized crime and narcotics trafficking. Without money laundering, drug traffickers would literally drown in cash. Drug traffickers need money laundering to conceal the billions of dollars in cash generated annually in drug sales and to convert his cash into manageable form . . . Regrettably, every dollar laundered means another dollar available to support new supplies of cocaine and heroin on the streets of this country.

S. Rep. No. 433, 99th Cong., 2d Sess. 4 (1986). See also *id.* at 2 (the statute is essential "to curb the spread of money laundering, by which criminals have successfully disguised the nature and source of funds from their illegal enterprises"); H.R. Rep. No. 855, 99th Cong., 2d Sess. Pt. 1, at 8 (1986) (money laundering is "a profoundly important tool of drug traffickers and organized crime figures enabling them to use the proceeds of their crimes to finance further crimes and to infiltrate legitimate business"); *id.* at 13 ("If we can make the drug dealers' money worthless, then we have really struck a chord, and we have hit him where he bruises, and that is right in the pocketbook."). The prohibitions contained in Sections 1956 and 1957 are therefore best understood as an effort to combat the "specified unlawful activity" itself, by proscribing the financial transactions that facilitate profitable, undetected commission of the underlying crimes.[6]

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[6] See, *e.g.*, *United States* v. *Savage*, 67 F.3d 1435, 1441 (9th Cir. 1995) ("Congress passed the money laundering statutes to criminalize the means criminals use to cleanse their ill-gotten gains"), cert. denied, 116 S. Ct. 964 (1996); *United States* v. *LeBlanc*, 24 F.3d 340, 346 (1st Cir.) (Congress "intended to criminalize a broad array of transactions designed to facilitate

2. The court of appeals concluded that respondent was not subject to prosecution in the Western District of Missouri because

> [respondent] was not accused of a "continuing offense." She was charged with money laundering, for transactions which began, continued, and were completed only in Florida. That the money came from Missouri is of no moment in this case, because [respondent] dealt with it only in Florida.

Pet. App. 4a. The court also stated that "[t]he only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which [respondent] executed only in Florida." *Id.* at 9a. That analysis is unsound. To the extent that the court narrowed its focus to include only the financial transactions that were alleged, it overlooked a vital element of the crime. Proof that respondent engaged in the financial transactions alleged in the indictment would not suffice, standing alone, to support a conviction for money laundering. The government is required to prove in addition that the laundered funds were produced by specified unlawful activity, and that respondent knew of their illicit origin. Put another way, absent some dirtying of the funds, there would have been nothing for respondent to wash. And the determination that particular funds were illegally derived is central to the purpose and proper application of the federal

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numerous federal crimes") cert. denied, 513 U.S. 896 (1994); *United States* v. *Stavroulakis*, 952 F.2d 686, 691 (2d Cir.) (money laundering prohibitions were enacted "[b]ecause individuals who are willing to conceal the source of illegal booty have become so necessary to the secrecy that * * * drug dealers cherish"), cert. denied, 504 U.S. 926 (1992).

money laundering provisions. See pp. 16-17, *supra*. If the court of appeals believed that the site of the laundering transactions alone is determinative of the venue question, its analysis cannot be squared with this Court's recognition that a federal criminal charge may be tried "where any part can be proved to have been done." *Lombardo*, 241 U.S. at 77.

Alternatively, the court of appeals may have concluded that venue should be limited to Florida because that was alleged to be the site of respondent's own criminal conduct. Neither the Constitution nor Section 3237(a), however, limits venue to the district where the defendant's own malfeasance occurred. In a variety of circumstances, venue in a federal criminal prosecution has been held proper despite the absence of evidence that the defendant had personally committed any criminal act, or indeed had ever been physically present, in the district where the prosecution was brought. See, *e.g.*, *Armour Packing Co.* v. *United States*, 209 U.S. 56, 76 (1908) ("The constitutional requirement is as to the locality of the offense and not the personal presence of the offender.").

An offense involving the use of the mails, for example, may be prosecuted "in any district from, through, or into which" the materials pass in transit. 18 U.S.C. 3237(a). See *In re Palliser*, 136 U.S. 257, 266 (1890) (holding, under predecessor version of general venue statute, that an offense committed through the use of the mails could be prosecuted in the district where the letter is received); *United States* v. *Johnson*, 323 U.S. 273, 275 (1944) (consistent with the Constitution, "an illegal use of the mails or of other instruments of commerce may subject the user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any

intervening district"). A prosecution for obstruction of justice may be brought in the district where the obstructed judicial proceedings occurred, even if the defendant's obstructive acts took place at another location.[7] And prosecutions under the Hobbs Act for obstructing, delaying, or affecting interstate commerce by means of robbery or extortion, 18 U.S.C. 1951(a), may be brought in the district where the requisite effect on interstate commerce is felt, as well as in the district where the robbery or extortion takes place.[8]

It is clear, in particular, that a federal crime can be "committed," for purposes of constitutional and statutory venue provisions, in a district where an element of the offense has been performed by some person other than the defendant. In *Hyde* v. *United States*, 225 U.S. 347 (1912), the defendants were convicted of conspiracy to defraud the United States out of public land located in Oregon and California. See *id.* at 349-351. The prosecution was brought in the District of Columbia, based on a co-conspirator's performance in

[7] See, *e.g.*, *United States* v. *Cofield*, 11 F.3d 413, 415-419 (4th Cir. 1993), cert. denied, 510 U.S. 1140 (1994); *United States* v. *Frederick*, 835 F.2d 1211, 1212-1215 (7th Cir. 1987), cert. denied, 486 U.S. 1013 (1988); *United States* v. *Reed*, 773 F.2d 477, 484-486 (2d Cir. 1985); *United States* v. *Barham*, 666 F.2d 521, 523-524 (11th Cir.), cert. denied, 456 U.S. 947 (1982); *United States* v. *Tedesco*, 635 F.2d 902, 904-906 (1st Cir. 1980), cert. denied, 452 U.S. 962 (1981). But see *United States* v. *White*, 887 F.2d 267, 272 & n.3 (D.C. Cir. 1989) (R.B. Ginsburg, J.) (holding that under prior circuit precedent, prosecution for bribery or obstruction of justice can be brought only in the district where the bribe or obstructive act took place).

[8] See *United States* v. *Stephenson*, 895 F.2d 867, 875 (2d Cir. 1990); *United States* v. *Lewis*, 797 F.2d 358, 367 (7th Cir. 1986), cert. denied, 479 U.S. 1093 (1987).

that district of overt acts in furtherance of the conspiracy; it was not alleged either that the defendants had entered the District of Columbia or that the conspiracy had been formed there. See *id.* at 356-357. The Court held that venue in that district was properly based on the performance of overt acts by the defendants' co-conspirator. *Id.* at 356-367. The courts of appeals have uniformly concluded that venue in a conspiracy prosecution brought under 18 U.S.C. 371 is proper in any district in which an overt act in furtherance of the conspiracy was committed by *any* of the conspirators.[9] The courts of appeals have similarly recognized that "one accused under 18 U.S.C. § 2(a) of aiding or abetting in the commission of some substantive crime may be prosecuted not only where he committed the accessorial acts, but also where the principal committed the substantive crime." *United States* v. *Griffin*, 814 F.2d 806, 810 (1st Cir. 1987).[10] Cf. *Strassheim* v. *Daily*, 221 U.S. 280, 285 (1911) ("Acts done outside a jurisdiction, but intended to produce and producing detrimental effects

[9] See, *e.g.*, *United States* v. *Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996); *United States* v. *Heaps*, 39 F.3d 479, 482 (4th Cir. 1994); *United States* v. *Smith*, 918 F.2d 1551, 1557 (11th Cir. 1990); *United States* v. *Uribe*, 890 F.2d 554, 558 (1st Cir. 1989); *United States* v. *Meyers*, 847 F.2d 1408, 1411 (9th Cir. 1988).

[10] Accord, *e.g.*, *United States* v. *Mendoza*, 108 F.3d 1155, 1156 (9th Cir.), cert. denied, 118 S. Ct. 351 (1997); *United States* v. *Brantley*, 733 F.2d 1429, 1434 (11th Cir. 1984), cert. denied, 470 U.S. 1006 (1985); *United States* v. *Kibler*, 667 F.2d 452, 455 (4th Cir.), cert. denied, 456 U.S. 961 (1982); *United States* v. *Buckhanon*, 505 F.2d 1079, 1083 (8th Cir. 1974); *United States* v. *Gillette*, 189 F.2d 449, 451-452 (2d Cir.), cert. denied, 342 U.S. 827 (1951).

within it, justify a State in punishing the cause of the harm as if he had been present at the effect.").

Thus, when a defendant's criminal acts are performed in concert with other wrongdoers, he is subject to prosecution in the districts where his confederates' criminal conduct occurred. Where the effect of a defendant's criminal conduct is felt in another district, and where proof of that effect establishes an element of the charged offense, the defendant may generally be prosecuted in the district where that effect is felt. Prosecution of respondent in the Western District of Missouri fits comfortably within those principles. The money laundering activities in which respondent is alleged to have engaged have been proscribed precisely because they may facilitate profitable commission of drug trafficking crimes. And while the defendant in a money laundering case need not be shown to have participated in the "specified unlawful activity," the government is required to prove that the laundered funds were criminally derived and that the defendant knew of their unlawful origin. Thus, both "the nature of the crime alleged and the location of the act or acts constituting it," *Anderson*, 328 U.S. at 703, support the conclusion that respondent may be prosecuted for money laundering at the site of the "specified unlawful activity."

If respondent, while physically present in Florida, had furnished material assistance to ongoing drug trafficking activities in the Western District of Missouri, she would be subject to prosecution in that district either as a conspirator or as an aider and abettor of the trafficking crimes. See pages 20-21, *supra*. Even if respondent's criminal *conduct* occurred entirely in Florida, her *offense*—some elements of which would involve the conduct of other persons—would have been committed in Missouri as well. The fact that the financial transactions charged in the indictment in this case are alleged to have taken place *after* the occurrence of the predicate "specified unlawful activity" does not alter that analysis. Proof that the funds in question were unlawfully derived is an essential element of the Section 1956 and 1957 offenses, and the effect of those offenses is most palpably felt in the district where the predicate crimes occurred. Thus, while the deposit and withdrawals (see Pet. App. 19a-20a) in which respondent is alleged to have engaged "began, continued, and were completed only in Florida," Pet. App. 4a, the *offenses* with which she was charged were committed in Missouri as well.

C. Prosecution Of Money Laundering Offenses In The District Where The "Specified Unlawful Activity" Occurred Furthers The Purposes Of The Pertinent Constitutional And Statutory Venue Provisions

1. The requirement that a criminal offense be prosecuted in the district where the crime was committed serves, first and foremost, as "a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place."[11] *United States* v. *Cores*, 356 U.S. 405, 407 (1958). See also, *e.g.*, *Johnson*, 323 U.S. at 275 (Article III's venue

[11] A defendant may, of course, waive that right. If the prosecution is brought in a permissible venue, the district court is authorized to transfer the case to another district for trial upon motion of the defendant, either because the defendant could not receive a "fair and impartial trial" in the forum district, Fed. R. Crim. P. 21(a), or "[f]or the convenience of parties and witnesses," Fed. R. Crim. P. 21(b).

requirement reflects the Framers' "[a]ware[ness] of the unfairness and hardship to which trial in an environment alien to the accused exposes him"). The Declaration of Independence lists, among the colonists' grievances, the assertion that British authorities had passed laws "[f]or transporting us beyond Seas to be tried for pretended offenses." See generally Drew L. Kershen, *Vicinage*, 29 Okla. L. Rev. 801, 805-809 (1976) (discussing colonial background of constitutional venue requirements); *United States* v. *Busic*, 549 F.2d 252, 257 (2d Cir. 1977) (a "significant source of these constitutional standards * * * can be discerned in the vigorous reaction of the American colonists evoked by Parliament's provision that trials of individuals accused of treason in Massachusetts be conducted in England"). The Constitution accordingly provides for trial where the crime "shall have been committed."[12]

The requirement that a criminal offense be prosecuted in the district where it was committed protects the ability of an accused person to mount an effective defense by increasing the likelihood that relevant evidence can be discovered and produced at trial. As one commentator has explained:

---

[12] The Constitution does not guarantee a criminal defendant the right to trial in his place of residence, since the place where an offense is committed "may or may not be the place where the defendant resides." *Anderson*, 328 U.S. at 705. See also Kershen, *supra*, 29 Okla. L. Rev. at 811 ("Although the constitutional draftsmen expected that the place of the commission of the crime and the residence of the accused would ordinarily coincide, if the two places did not, the draftsmen chose the place of the commission of the crime as the appropriate test for determining venue.").

> The complainant and the witnesses to the alleged crime most likely live in the vicinity of the place of the incident's occurrence. Tangible evidence of the alleged crime is to be found, most probably, in the vicinity of the place of commission. Hence, the defendant ought to be able more easily to investigate the alleged crime, to obtain interviews with the witnesses to the alleged crime, to present the evidence found during the investigation at trial, and to insure the presence of the witnesses at trial if it is held near the place of the commission of the alleged crime than would be so if the trial were held at a distant location.

Kershen, *supra*, 29 Okla. L. Rev. at 810.

Allowing money laundering prosecutions to be brought in the district where the predicate "specified unlawful activity" occurred is at least as likely to further the defendant's ability to procure relevant evidence and present a vigorous defense as trial in the district where the defendant's financial transactions took place. In many prosecutions brought under the federal money laundering statutes, 18 U.S.C. 1956, 1957, the principal issue in dispute is the origin of the funds involved in the pertinent financial transactions, rather than the fact of the transactions or the defendant's responsibility for them. In the present case, for example, proof that respondent made the deposit and withdrawals alleged in the indictment (see Pet. App. 19a-20a) is likely to be simple and straightforward regardless of the district in which the prosecution is brought. Determining whether the funds in question were derived from "specified unlawful activity" is more likely to require extensive evidentiary proceedings, and the relevant witnesses and

physical evidence are more likely to be found in Missouri than in Florida. Prosecuting a defendant for money laundering in the district where the "specified unlawful activity" occurred therefore does not involve the type of governmental abuse that the Constitution's venue limitations were intended to prevent.

Federal prosecutors frequently wish to try money laundering counts together with charges for the substantive criminal offenses that generated the tainted funds. Because the government must prove in a money laundering prosecution that the pertinent funds were generated through "specified unlawful activity," that practice conserves the resources of the parties and the courts. A requirement that money laundering charges be filed in the district where the defendant's financial transactions are alleged to have occurred would impair the efficient conduct of such prosecutions. At least in some cases, such a rule would force the government to choose between undertaking duplicative efforts to prove the existence of the specified unlawful activity, on the one hand, or foregoing the money laundering prosecution, on the other. Compare *United States* v. *Pomranz*, 43 F.3d 156, 161 (5th Cir.), cert. denied, 116 S. Ct. 513 (1995). Absent any persuasive reason to believe that fixing venue at the place of those transactions would typically assist the accused in preparing his defense, such an impairment is unwarranted.

2. The requirement that a criminal prosecution be brought in the district where the offense occurred also serves to protect the interest of the victimized community both in participating (through the jury) in the administration of the criminal justice system and in observing the process by which justice is administered. See *United States* v. *Palma-Ruedas*, 121 F.3d 841, 862 (3d Cir. 1997) (Alito, J., dissenting) ("Recent scholarship has suggested another possible purpose [of the Constitution's venue and vicinage provisions]: to protect a community's right to have trials of local offenses occur in the community."), petition for cert. pending *sub nom. United States* v. *Rodriguez-Moreno*, No. 97-1139; Akhil R. Amar, *The Constitution and Criminal Procedure—First Principles* 124 (1997) ("Underlying the district clause [of the Sixth Amendment] is also, perhaps, the idea that a crime—unlike a civil wrong—constitutes a moral rupture, a distinct breach of the peace of the place where the crime occurred.").[13] The requirement that a criminal trial be held at the place where the offense occurred thus complements the Sixth Amendment requirement

[13] An Act of Parliament passed in 1774 provided that persons accused of murder or other capital offenses in Massachusetts Bay could be tried in an adjoining province or in England if the governor determined that the defendant was engaged in the suppression of riots or the enforcement of the revenue laws, and that an "indifferent trial" could not be had in Massachusetts Bay. See William W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59, 63 (1944); see also Kershen, *supra*, 29 Okla. L. Rev. at 807 (stating that the statute "was primarily intended to provide protection to British soldiers such as those involved in the Boston Massacre"). The Declaration of Independence listed among the colonists' grievances the passage of British legislation "[f]or protecting [British troops], by a mock Trial, from punishment for any murders which they should commit on the Inhabitants of these States." The Declaration of Independence thus reflects not only the view that the rights of criminal defendants could be prejudiced by trial in a remote location (see p. 24, *supra*), but also a concern that trial at a distant site could impair the prerogatives of the victimized community. See Amar, *supra*, at 243 n.163.

that the trial be "public," a requirement that has been recognized to serve the interests of both the defendant and the victimized community. See, *e.g.*, *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 564-573 (1980) (opinion of Burger, C.J.); *id.* at 589-597 (Brennan, J., concurring in the judgment).

The pertinent constitutional and statutory provisions thus serve in part to ensure that the administration of the criminal justice system is responsive and visible to members of the community most directly affected by episodes of criminal conduct. With respect to the money laundering offenses defined by Sections 1956 and 1957, those concerns weigh in favor of trial in the district where the "specified unlawful activity" occurred. As we explain above, the conduct proscribed by Sections 1956 and 1957 is harmful because it facilitates the commission of the predicate offenses by enabling criminals to escape detection while retaining their illicit profits. The community in which the predicate crimes occur—in this case, the Western District of Missouri—is thus the community most directly victimized by violations of the money laundering statute. It is therefore appropriate to seek to vindicate the community's interests by trial in that district.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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In The

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October Term, 1997

UNITED STATES OF AMERICA,

Petitioner,

v.

VICKIE S. CABRALES,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

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QUESTION PRESENTED

Whether venue in a prosecution for money laundering under 18 U.S.C. §§ 1956 and 1957 is also proper in the district where the illicit funds were generated, when all of the defendant's alleged unlawful financial transactions occurred in another district.

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William W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59 (1944) 42

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 109 F.3d 471. A subsequent amendment to that opinion (Br. in Opp. App. 1) is reported at 115 F.3d 621. The order of the district court (Pet. App. 10a-12a) is unreported. The report, recommendation, and order of the magistrate (Pet. App. 13a-16a) is unreported.

JURISDICTION

Respondent is satisfied with and generally adopts Petitioner's section entitled Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE INVOLVED

1. Article III, Section 2, Clause 3 of the United States Constitution provides as follows:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

2. The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,

> which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. Section 1956(a)(1) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity –
>
> * * *
>
> (B) knowing that the transaction is designed in whole or in part –
>
> * * *
>
> (ii) to avoid a transaction reporting requirement under State or Federal law,
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

4. Section 1957(a) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever * * * knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful

> activity, shall be punished as provided in subsection (b).

5. Section 3237(a) of Title 18, United States Code, provides as follows:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.
>
> Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

6. Rule 18, Federal Rules of Criminal Procedure, provides as follows:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

STATEMENT OF THE CASE

Respondent is satisfied with and generally adopts Petitioner's section entitled Statement.

SUMMARY OF ARGUMENT

Article III, Section 2, Clause 3 of the Constitution states that "The Trial of all Crimes . . . shall be held in the State where said Crimes shall have been committed." The Constitution, however, "do[es] not furnish guidance for determination of the place of the crime. That place is determined by *the acts of the accused* that violate a statute." *Johnston v. United States*, 351 U.S. 215, 220 (1956) (emphasis added). The alleged acts of Cabrales that violated the money laundering statute occurred only in Florida. Consequently, the Eighth Circuit correctly held that venue was proper only in Florida.

The government contends that Cabrales can be prosecuted in Missouri because the "dirty" money allegedly came from there. This contention is based on the fact that certain crimes can be "committed" in more than one State, and thus, can be prosecuted in any State in which the crime was "committed". But venue is determined by the acts of the accused that violate a statute, *i.e.*, the actus reus element of the offense. This Court, as well as every lower court that has analyzed a venue issue, has generally performed the same analysis – the terms of the statute are analyzed to determine the proscribed conduct (*i.e.*, the actus reus), then it is determined where that conduct was "committed", and thus where venue lies. Pursuant to this accepted analysis, the Eighth Circuit

correctly determined that the money laundering offenses were "committed" in Florida.

Rather than base venue on the acts of the accused, the government proposes an unconstitutional and unworkable "essential elements" test. Although the government concedes that not every element of a crime can be used to establish venue, Br. for Petitioner, 16, it argues that any "essential element" can be used to establish venue. This "essential elements" test is unconstitutional, injects confusion into the law, is unworkable, and produces absurd results. The government's test would lead to *ad hoc* adjudication regarding which elements, all of which must be proven beyond a reasonable doubt, are essential and which are non-essential in determining venue. In contrast, the "acts" test is simple and predictable, and gives the lower courts workable guidelines to determine the proper venue for a prosecution.

The crime of money laundering is committed only where the actual acts of money laundering occur, not where the underlying drug transactions occurred. Stated differently, the crime of money laundering "begins" when the financial transaction is undertaken, not when the separate underlying crime occurs. By attempting to base venue on the "attendant circumstance" of the source of the money, the government attempts to redefine the term "continuing offense". A "continuing offense" is a crime where the *act itself* is "committed" in more than one district. Money laundering is, of course, *capable* of being a "continuing offense", (*e.g.*, defendant wire transfers money between various banks in different States); however, this is not what the government is claiming. The government's claim is much broader: a rule allowing for

prosecutions in different districts even though all of the alleged *acts of the money launderer* took place in one district.

Prosecuting the instant money laundering offenses anywhere other than Florida, where the crime was allegedly "committed", would disrespect the constitutional provisions and the policies underlying them. As the Court cautioned in *United States v. Johnson*, 323 U.S. 273, 275 (1944), an expansive interpretation of venue could lead to needless hardship on the accused who is forced to defend himself far from home and available defense resources, and could lead to "the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution." The constitutional safeguards of venue are some of the most fundamental principles of our criminal justice system, and they should not be hastily balanced away under the guise of cost and inconvenience as the government urges.

The government fails to understand that the central events in a money laundering prosecution occur where the prohibited financial transaction is conducted. Moreover, the government's assertion that Missouri is the victimized community of the alleged crime is misplaced in that the crime of money laundering has as its gravamen issue the misuse of financial institutions and vehicles. Therefore, it is very much in Florida's interest – just as it is in Missouri's interest to interdict drug sales – to deter the misuse of its financial institutions by criminals. This is because the crime of money laundering is conducting the financial transaction, not the "specified unlawful activity". Finally, it will be an extremely rare situation in which the government will have "to choose between

undertaking duplicative efforts to prove the existence of the specified unlawful activity" or "forego[] the money laundering prosecution", Br. of Petitioner at 26. If such a situation occasionally presents itself, the government's complaint is with the Framers who, in both the Constitution and the Bill of Rights, required all crimes to be prosecuted in the State where they were committed.

ARGUMENT

I. The Constitution demands that a criminal defendant be tried where the crime was "committed".

Article III, Section 2, Clause 3 of the Constitution states that "The Trial of all Crimes . . . shall be held in the State where said Crimes shall have been committed." To "underscore the importance of this safeguard, it was reinforced by the Bill of Rights requiring trial 'by an impartial jury of the State and district wherein the crime shall have been committed.' " *United States v. Johnson*, 323 U.S. 273, 275 (1944) (*quoting* U.S. Const. Sixth Amend.). Thus, by constitutional command, venue may only be placed *where the crime was committed*. *United States v. Cores*, 356 U.S. 405, 407 (1958) ("The Constitution makes it clear that determination of proper venue in a criminal case requires determination of where the crime was committed.").

The constitutional provisions, however, "do not furnish guidance for determination of the place of the crime. That place is determined by *the acts of the accused* that violate a statute." *Johnston v. United States*, 351 U.S. 215, 220 (1956) (emphasis added); *accord United States v. Anderson*, 328 U.S. 699, 705 (1946) ("It is, of course, necessary in

order to decide where the crime is committed to ascertain . . . what *acts of the defendant* constituted the violation.") (emphasis added).[1]

Venue issues are discrete; in each case the statute must be analyzed to determine the "nature of the crime alleged and the location of the act or acts constituting it." *Anderson*, 328 U.S. at 703; *accord Travis v. United States*, 364 U.S. 631, 635 (1961) ("The decisions are discrete, each

[1] This Court's precedent strongly supports the notion that it is the acts – and only the acts – of the defendant for which he is being punished that will confer venue in a certain district. The cases cited by the government do not contradict this simple fact. See Br. of Petitioner, 20-21. Those cases merely stand for the proposition that a coconspirator or other accomplice in the *same* crime may be tried where the crime was committed. *See, e.g., Hyde v. United States*, 225 U.S. 347 (1912); *United States v. Griffin*, 814 F.2d 806 (1st Cir. 1987). In cases such as aiding and abetting, conspiracies, or racketeering, courts have recognized that the crime is "committed" where the criminal acts in furtherance of the criminal purpose are performed; thus, these types of crimes are often "continuing offenses", *i.e.*, when the *acts* are "committed" in more than one district. *See, e.g., Hyde*, 225 U.S. at 361-62. In the instant case, the drug dealers' predicate crimes are not part of the money laundering, and the money laundering crime is separate: the drug dealers do not have to be party to the laundering, and the launderer does not have to be a party to the drug dealing. *See, e.g., United States v. Ospina*, 798 F.2d 1570 (11th Cir. 1986) (defendant convicted of money laundering though there was no allegation that defendant was involved in or knew the details of the underlying criminal activity). Of course, if Cabrales *was* a coconspirator in the drug dealing, she could have been prosecuted in Missouri for *that* crime (conspiracy to deal drugs), but not for any other substantive crime she did out-of-state, whether it be money laundering in Florida or a substantive act of drug possession in Illinois.

looking to the nature of the crime charged."). In deciding where an offense was committed and thus where venue lies, "the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *Anderson*, 328 U.S. at 703.

It is clear that certain crimes can be "committed" in more than one State, and thus, consistent with the constitutional safeguards, the crime can be prosecuted in any state in which the crime was "committed". See *United States v. Cores*, 356 U.S. 405, 408-09 (1958) (crime of remaining in the United States after the expiration of a landing permit for visiting sailors is continually violated in every district the defendant goes after the permit expires); *Armour Packing Co. v. United States*, 209 U.S. 56, 74 (1908) (Crime to procure transportation of goods at a lower rate than the published tariffs is committed "[w]herever such transportation is received."). Congress recognized the reality that crimes can be "committed" in more than one district when it enacted 18 U.S.C. § 3237(a) which provides that

> any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which the offense was begun, continued, or completed.

A continuing offense is simply an offense that is "committed" in more than one district, and therefore can be prosecuted in more than one district.[2] Thus, in the

[2] Conspiracy, which is a subset of the "continuing offense" doctrine is not at issue in this case; however, the analysis herein applies equally to a conspiracy. Conspiracy, like many crimes is

context of a "continuing offense", the crime is committed "wherever the wrongdoer roamed." *Travis v. United States*, 364 U.S. 631, 634 (1961) (citing *United States v. Cores*, 356 U.S. 405 (1958)).[3]

Importantly, § 3237 only applies to crimes that are "committed" in more than one district. Stated another way, even Congress cannot specify that a trial for a crime can be held somewhere other than where the crime was "committed". For example, a statute that said "all money laundering crimes should be prosecuted in Missouri" would be unconstitutional as to crimes "committed" elsewhere. In this regard, this Court has cautioned that § 3237

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capable of being a "continuing offense". *See, e.g., Hyde*, 225 U.S. at 361-66. The crime of conspiracy consists of the "agreement" to accomplish criminal means, and the crime is "committed" by the various acts of the conspirators that show their adherence to the common scheme. *Id.* So wherever any coconspirators commit *acts* in furtherance of the conspiracy, that is where the "agreement", or part of it, took place. *Id.* Courts have reasoned that the defendant's own act – that of agreeing or signing on to the conspiracy or the organization – incorporates by reference the acts of others and makes him vicariously liable for them. *See id.* at 362-64 (recognizing a "constructive" presence of coconspirators in the district where acts in furtherance of conspiracy were committed). In the money laundering context here, and in the example of receipt of stolen property below, there is no act by the defendant that signals agreement with the underlying crimes, even though they may be predicates for the charged crime.

[3] *Cores* was possibly a more limited holding than *Travis* indicated. In *Cores*, the Court held that venue was proper where the defendant was "found" – it did not decide the issue of whether the defendant could be prosecuted in any district where he may have been after the expiration of the permit. *Cores*, 356 U.S. at 409.

must be "read in light of the constitutional requirements and the explicit" language of the offense. *Travis v. United States*, 364 U.S. 631, 637 (1961); *see also Johnston v. United States*, 351 U.S. 215, 223-24 (1956), (Douglas, J., dissenting) (statute should be construed against the two historic constitutional provisions, and any doubts should be resolved in favor of the citizen). Therefore, § 3237 can *only* constitutionally apply to crimes that are "committed" in more than one place.[4] The statute is *about* continuing offenses: offenses "begun in one district and completed in another, or committed in more than one district." 18 U.S.C. § 3237. The government cannot prevail in this case because the government cannot establish that the "continuing offense" doctrine applies to money laundering offenses such that a money launderer whose only acts occur in one State can be prosecuted in another State where the underlying illegal activity took place.

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[4] In its brief, the government states that § 3237 reflects a congressional intent to allow prosecution "in any district permitted by the constitution." Br. of Petitioner, 13-14 & n.4. This is an overstatement. The statute recognizes that certain offenses are "continuing offenses", and allows as a statutory matter prosecution in a variety of districts. Nothing in the statute or in the legislative history, however, suggests that Congress meant § 3237 to be read as "venue can be had wherever the constitution permits" rather than as allowing venue in the specific circumstances which the statute refers. As noted by one commentator, the Reviser's comments quoted by the government, Br. of Petitioner, 13-14 & n.4, "presuppose[ ] that a wide choice of venue is necessarily a good thing, a view prosecutors are likely to share but that many persons, including not infrequently a majority of the Supreme Court, have rejected." 2 Charles A. Wright, *Federal Practice and Procedure*, § 303, at 207 (2d ed. 1982) (footnote omitted).

In determining where a crime was "committed", and thus where venue lies, this Court is "aware that venue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of 'a tribunal favorable' to it." *Travis v. United States*, 364 U.S. 631, 634 (1961) (quoting *United States v. Johnson*, 323 U.S. 273, 275 (1944)). Thus, analysis begins "from the premise that questions of venue are more than matters of mere procedure. 'They raise deep issues of public policy in the light of which legislation must be construed.' " *Travis v. United States*, 364 U.S. 631, 634 (1961) (quoting *United States v. Johnson*, 323 U.S. at 276).

II. Precedent of this Court has established workable guidelines for determining where a crime was "committed" for purposes of determining venue; the government's "essential elements" argument abandons established precedent and offers a "test" that would cause confusion in the law and would provide no analytical framework for determining venue.

A. Venue is determined by the acts of the accused that violate a statute, *i.e.*, the actus reus element of the offense.

The decisions of this Court state that venue must be "determined by *the acts of the accused* that violate a statute." *Johnston v. United States*, 351 U.S. 215, 220 (1956) (emphasis added); see also *United States v. Anderson*, 328 U.S. 699, 705 (1946) ("It is, of course, necessary in order to decide where the crime is committed to ascertain . . . what *acts of the defendant* constituted the violation."

(emphasis added)) (Statute must be analyzed to determine the "nature of the crime alleged and the location of the act or acts constituting it." *Id.* at 703.).

This Court, as well as every lower court that has analyzed a venue issue, has generally performed the same analysis – the terms of the statute are analyzed to determine the proscribed conduct (*i.e.*, the actus reus), then it is determined where that conduct was "committed", and thus where venue lies. The holdings and language of *Travis*,[5] *Cores*,[6] *Johnston*,[7] *Anderson*,[8] *Johnson*,[9]

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[5] In *Travis*, the Court focused on the statutory phrase "on file with the Board" to determine that the statute penalized "only the single act of having a false statement at a specified place"; thus, the Court held venue to be proper only where the false statement was filed. 364 U.S. at 637.

[6] In *Cores*, the Court focused on the verb "remains" to determine that the crime is "committed" wherever the defendant "remains" after expiration of the landing permit; thus, holding that the venue is proper and the crime can be prosecuted where the defendant "willfully remains after the permit expires." 356 U.S. at 409.

[7] In *Johnston*, the Court focused on the statutory phrase "knowingly fail or neglect or refuse to perform any duty required of him under . . . this title" to determine that "where the crime charged is a failure to do a legally required act, the place fixed for its performance fixes the situs of the crime." 351 U.S. at 219 n.4, 220.

[8] In *Anderson*, the Court analyzed the statute to determine that it mandated the defendant "to take the oath"; the Court, finding that the place of performance and the place of refusal to *act* were identical, held that venue is proper in that district in which the defendant "acted" by refusing "to take the oath". 328 U.S at 706.

[9] In *United States v. Johnson*, 323 U.S. 273 (1944), all nine justices analyzed the case by focusing on the verb phrase "use

Midstate Horticultural Company,[10] *Lombardo,*[11] *Freeman,*[12] as well as all other precedent of this Court, confirm this approach. A number of circuit courts have reflected this emphasis on the *acts* in determining venue in the so-called "key verbs" analysis: the crime is "committed" where the person does the *act* prohibited by the "key verb".[13] Other circuit courts have adopted the so-called

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the mails"; the disagreement between the majority and the dissent centered upon the issue of whether that phrase denoted a "continuing offense", not whether venue could be placed by focusing on other elements of the crime.

[10] In *United States v. Midstate Horticultural Co.*, 306 U.S. 161, 166-67 (1939), the Court focused on the statutory language of "granting and receiving of rebates" to hold that venue was improper in a district other than where the "granting" or "receiving" were alleged to have occurred.

[11] In *United States v. Lombardo*, 241 U.S. 73, 76 (1915), the Court focused on the verb "file" as being the criminal act. The Court, in rejecting the government's attempt to characterize the crime as a "continuing offense", held that venue is only proper where the statement was required to be filed. *Id.* at 77-78.

[12] In *United States v. Freeman*, 239 U.S. 117, 119-20 (1915), the Court, equating the statutory language "ship" to "transport", held that a statute making it a crime to "ship" into any other State any package of intoxicating liquor could be prosecuted where the liquor was shipped.

[13] The First, Third, Fourth, Eighth, Ninth and Tenth Circuits have adopted the "verb test," which analyzes the operative verbs, key terms, and policies underlying the statute defining the offense. *United States v. Corona*, 34 F.3d 876, 879 (9th Cir. 1994) (Ninth Circuit adopted "key verbs" test, which examines the verbs in a statute that defines the criminal conduct to determine where the offense was committed.); *United States v. Griffin*, 814 F.2d 806, 810 (1st Cir. 1987); *United States v. Georgacarakos*, 988 F.2d 1289, 1293 (1st Cir. 1993) ("To determine venue, we examine 'the key verbs in the statute defining the

"substantial contacts" test to determine venue which takes into account a number of factors, the most important being the site of the defendant's acts.[14] Regardless of the name, there is no appreciable difference between the lower court "tests" for determining venue – each looks to the language of the statute to determine the actus reus of the crime. Commentators have likewise confirmed this approach. See 2 Charles A. Wright, *Federal Practice and Procedure*, § 302, at 199 (2d ed. 1982) (focuses on key

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criminal offense' to find the scope of the relevant conduct." (quoting *United States v. Tedesco*, 635 F.2d 902, 905 (1st Cir. 1980)); *United States v. Donahue*, 885 F.2d 45, 50 (3d Cir. 1989) ("[L]ook at the statutory verb in the description of the offense in determining where an offense was committed."); *United States v. Cofield*, 11 F.3d 413, 416 (4th Cir. 1994) ("[W]e have adopted the 'verb test' as an interpretative aid"); *United States v. Medina-Ramos*, 834 F.2d 874, 876 (10th Cir. 1987); *United States v. Crawford*, 115 F.3d 1397, 1405 (8th Cir. 1997) (applying the "active verb" or "key verb" test to the Child Support Recovery Act). *United States v. Ryan*, 894 F.2d 355, 360 (10th Cir. 1990) ("Courts usually examine the verbs employed in the statute to define the offense.").

[14] The "substantial contacts" test, first articulated by the Second Circuit and since adopted by the Sixth and Seventh Circuits, takes into account a number of factors including the site of defendant's acts and the effect of the criminal conduct. *United States v. Reed*, 773 F.2d 477 (2nd Cir. 1985); *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1188-89 (2nd Cir. 1989); *United States v. Williams*, 788 F.2d 1213, 1215 (6th Cir. 1986); *United States v. Beddow*, 957 F.2d 1330 (6th Cir. 1992); *United States v. Chappell*, 854 F.2d 190, 193 (7th Cir. 1988). The Sixth and Seventh Circuits adopted the *Reed* analysis in determining venue for bail-jumping under 18 U.S.C. § 3150. *Williams*, 788 F.2d at 1215; *Chappell*, 854 F.2d at 193. (In both, venue was proper where release was ordered and in the district where defendant failed to appear.)

verbs of statutes to determine where the crime is committed); see Norman Abrams, *Conspiracy and Multi-Venue in Federal Criminal Prosecutions: The Crime Committed Formula*, 9 UCLA L. Rev. 751, 777 (1962) (author finds the "verb test" important first step in determining venue in a multi-district conspiracy); Armistead M. Dobie, *Venue in Criminal Cases in the United States District Court*, 12 Va. L. Rev. 287, 289 (1926) (The "essential verb usually contains the key to the solution of the question: in what district was the crime committed.").

As stated above, *Johnston* and *Anderson*, and all other precedent of this Court, suggest that the answer to the question of venue is to be found by analyzing each particular statute to determine the "acts" of the defendant that constitute the commission of the crime. *Johnston v. United States*, 351 U.S. 215, 220 (1956); *United States v. Anderson*, 328 U.S. 699, 705 (1946). Crimes are typically defined with reference to three types of elements: (i) conduct (which includes both actions and the accompanying state of mind) (ii) attendant circumstances and (iii) results. See Model Penal Code § 1.13(9), defining "element of an offense" and § 1.13(5), defining "conduct" to include both acts and the accompanying mens rea.[15] Courts confronting venue questions have typically looked to the "actus reus" element as defining

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[15] This Court has used the term "predicate circumstance" to distinguish the actus reus element from "attendant circumstance" elements. *See United States v. Yermain*, 468 U.S. 63, 69 (1984) (holding that the intent elements "knowingly and willfully" modify only the making of "false, fictitious, or fraudulent statements," not the "predicate circumstance" that those statements be made in a matter within the jurisdiction of a federal agency.). As noted in footnote 17, *infra*, a "predicate circumstance" is simply a type or subset of "attendant circumstance".

where the crime was "committed", and a "continuing offense" is typically one where that act *in itself* crosses state lines. See, *e.g.*, *Cores*, 356 U.S. at 408; *Armour Packing Co.*, 209 U.S. at 77. Thus, if a law prohibits "transporting assault rifles in interstate commerce," and the defendant transported assault rifles by train from New York to California, the defendant has committed that *act* in a variety of States, and § 3237 recognizes that this is a "continuing offense" and that it can be punished in any of the States in which the defendant *transported* the assault rifles. See, *e.g.*, *Armour Packing Co.*, 209 U.S. at 77 (the crime is committed in each district through which the "transportation is received at the prohibited rate.").

Of course, there may be other elements to a given crime, in addition to the act: typically, the act is prohibited only if it is committed under certain circumstances, or with a particular state of mind. But the place where those circumstances arose is *not* a place where the crime is "committed". For example, under federal law it is illegal to receive stolen property that has traveled in interstate commerce. See 18 U.S.C. § 2315 (making it unlawful to knowingly receive, possess or conceal stolen property that has traveled in interstate commerce – a crime closely analogous to money laundering, in that it criminalizes the conduct of someone who contributes to the success of unlawful activities by acts *after* another crime was committed). If Smith knowingly purchases in New York goods that were stolen in California, he violates 18 U.S.C. § 2315. The criminal *act* occurs in New York (where he received the stolen property), and that is where Smith must be prosecuted. See, *e.g.*, *United States v. Bozza*, 365 F.2d 220-221 (1966).[16] It is, of course, an "essential

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[16] In *United States v. Bozza*, 365 F.2d 206, 220-221 (1966), Judge Friendly distinguished the actus reus of a § 2314

element" of that crime that the goods in fact were stolen, but that is an "attendant circumstance."[17] The *property* must have been stolen, but Smith did not have to have participated in the theft, or conspired with those who did, or even to know who stole the goods or where they were stolen.[18] Simply put, the crime that Smith "committed" is separate from that of the thieves.[19]

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violation, (*i.e.*, "receipt of stolen stamps"), from acts in preparation of the crime that *did* occur in district to determine that venue was improper for a substantive violation of § 2314 in any district other than where the property was received. *See also United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181 (2nd Cir. 1984) (followed *Bozza*).

[17] Because venue should *never* be based on an "attendant circumstance" element, the different types or subdividing of "attendant circumstances" (*e.g.*, status or precondition elements) is an academic issue. It is worth noting that most "attendant circumstance" elements will not raise venue issues (*e.g.*, burglary "at night" or arson of a "residential premises"); the "attendant circumstances" that do raise venue issues will usually involve precondition or status elements ("predicate circumstance" elements) because these tend to involve the possibility of past acts that occurred elsewhere (*e.g.*, "conditions" like "dirty" money or "stolen" property, or a "status" such as "convicted felon").

[18] Just as a money launderer need not have participated in the underlying criminal activity, nor known those who did, or even known what that activity was or where it occurred. *See, e.g., United States v. Ospina*, 798 F.2d 1570 (11th Cir. 1986) (defendant convicted of money laundering though there was no allegation that defendant was involved in or knew the details of the underlying criminal activity).

[19] Of course, if Smith agreed with the thieves in advance that he would fence in New York the goods they were planning to steal in California, then he would be an aider and abettor who was a participant in the underlying crime in California, and Smith could be prosecuted in California for *theft* with the

The same is true of a number of other crimes. For example, a felon in possession of a firearm commits a crime, see 18 U.S.C. § 922(g)(1), but the crime occurs where the gun is possessed (the act) not where the underlying felony took place.[20] See *United States v. Lanoue*, 1998 WL 78817 *2, ___ F.3d ___ (prosecution for violation of 18 U.S.C. § 922(g)(1) proper *only* where defendant possessed the firearm). The fact that the defendant was once convicted of a felony is an "attendant circumstance" element or a "predicate circumstance", not the *act* that constitutes the commission of the offense; thus, even though the conviction of the felony is an "essential element" of the offense that must be proven beyond a reasonable doubt, it is not one that confers venue.[21] Similarly, *as the government*

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principals. See Br. of Petitioner, 22 (*If* Respondent had assisted in the ongoing drug trafficking activities in Missouri, she would be subject to prosecution in that district as an aider and abettor of the trafficking crimes.). But the actual receipt of stolen property (the substantive violation of 18 U.S.C. § 2315) occurs in New York and must be prosecuted there.

[20] The venue issue presented by the felon in possession of a firearm hypothetical is actually less problematic for the government than the one presented by the instant case because the crime of felon in possession requires the *defendant* to have committed the underlying felony whereas the offense of money laundering does not require the defendant to have committed the underlying "specified unlawful activity."

[21] Cases raising issues regarding the element of an offense to which statute of limitations apply are analogous. In the case of a felon in possession of a firearm, it is generally held that the statute of limitations applies to the actus reus of possessing the firearm, not the interstate nexus element that the firearm had traveled in interstate commerce. *See, e.g., United States v. Shelton*, 66 F.3d 991, 992 (8th Cir. 1995) (only required that defendant possess firearm within limitation period, not that it had been

concedes, venue would not be appropriate in the State in which the firearm was manufactured, or where it may have traveled in interstate commerce, even though "affecting commerce" is an "essential element" of the crime that must be proven beyond a reasonable doubt. See Br. of Petitioner, 16 n.5.

Similarly, it is a crime to "transport . . . in interstate . . . commerce, any firearm which has had the . . . manufacturer's serial number removed." 18 U.S.C. § 922(k). The removal of the serial number is an "essential element" of the offense, but someone who transported from Missouri to Wisconsin via Illinois a firearm from which someone removed the serial number three years earlier in Oregon cannot be prosecuted in Oregon: the *act* prohibited is the transportation in commerce, which occurred in Missouri, Illinois and Wisconsin; the fact that the serial number had been removed long before is an element that must be proven beyond a reasonable doubt, but it is an "attendant circumstance" element or "predicate circumstance" that makes the *act* of transporting illegal; it is not a part of the acts constituting the offense. *See Anderson*, 323 U.S. at 705. Put another way, under § 3237, this is not a crime that began in Oregon, or was committed in more than one district that includes Oregon – it is an offense begun in Missouri and ended in Wisconsin, and committed in the three states where the transportation took place. See, *e.g., Armour Packing Co.*, 209 U.S. at 77.

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transported across a State line during that period). If a crime is not an "element" to which the statute of limitations applies, can it be an "element" for purposes of venue? Would not a similar analysis be performed, that is, to look to the actus reus element?

The same is obviously true of money laundering. If the money launderer was a party to the underlying predicate offenses, and aided and abetted them by agreeing to launder the proceeds, he would be guilty of the narcotics crimes that occurred in Missouri. But the actual offense of money laundering is a separate crime,[22] created by Congress precisely because in some cases it could not be shown (and perhaps was not even the case) that the money launderer was connected to the underlying crimes,[23] and so could not be prosecuted for them.[24] Instead, Cabrales is allegedly involved only in the separate and distinct activity of engaging in a financial transaction with allegedly "dirty" money. The source of the money (like where the property was stolen in the receiving example, or the absence of the serial number in the § 922(k) example, or the status of being a convicted felon in the felon in possession example) is the "attendant circumstance" that makes the *act* committed in Florida criminal, but the crime is "committed" in Florida, where the *act* takes place.

The government may argue that it does not disagree with the analysis of these other examples but that those are different cases. However, such an argument would

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[22] See footnote 35, *infra*, and cases cited therein.

[23] *See, e.g., Ospina*, 798 F.2d 1570.

[24] *See* S. Rep. No. 99-433 at 4 (1986) ("[M]any [criminal organizations] now employ professionals to devise and assist in complex laundering operations. Most disturbing is the increasing willingness of a few dishonest attorneys, accountants, and bankers to participate in these sophisticated schemes.").

simply confirm that the government's "essential elements" test has no objective content, and is simply a one-day ticket, "good for this day and train only", constructed as an *ad hoc* justification for its preferred result in this case. See *County of Washington v. Gunther*, 452 U.S. 161, 183 (1981) (Rehnquist, J., dissenting) (quoting *Smith v. Allwright*, 321 U.S. 649, 669 (1944) (Roberts, J., dissenting). The government should not be permitted to devise *ad hoc* venue tests to permit it to bring charges where and as it chooses. The question asked by the constitution is: where was the offense committed? This Court has consistently focused on the "act" element of the crime to reach consistent, predictable, and sensible results. The government's proposed "essential elements" test would either permit venue in all sorts of arbitrary and unreasonable places (if applied consistently) or be subject to unpredictable *ad hoc* application as the government chooses to declare elements of the crime – all of which are essential to conviction – as "essential" or "not essential" according to its preferred result.

The government formulates the question presented as whether venue for "money laundering under 18 U.S.C. §§ 1956 and 1957 is proper . . . where the illicit funds were generated." Yet, the confusing and unworkable nature of the government's test is demonstrated by the fact that it cannot plausibly be applied even to all cases of money laundering under those statutes. For example, 18 U.S.C. § 1956(a)(3) makes it a crime to conduct or attempt to conduct "a financial transaction involving property represented to be the proceeds of specified unlawful activity".

The "representation" that the money constitutes the proceeds of specified unlawful activity is an essential element of the crime – without it the financial transaction would be legal. *United States v. Dimeck*, 815 F.Supp. 1425, 1428 (D.Kan. 1993), *rev'd* on other grounds, 24 F.3d 1239 (10th Cir. 1994). The government could not plausibly contend that venue is proper in a district that had no connection to the crime but that an undercover agent "represented" it to be the place where the non-existent specified unlawful activity occurred. But the "represented" element bears exactly the same relationship to the money laundering offense under § 1956(a)(3) as the commission of the actual specified crimes to the subsections involved in this case.

Whether called the "acts" test, the "key verb" test, the "substantial contacts" test, or some other name, the same analysis is being performed – the terms of the statute are analyzed to determine the proscribed conduct (*i.e.*, actus reus), then it is determined where that conduct occurred, and thus where venue lies. Venue must be based on the "actus reus" element of the crime. Stated differently, venue cannot be based on the locality (if one exists) of any of the other elements of the offense, *i.e.*, "attendant circumstance" elements. Determining venue on anything other than the "actus reus" of the defendant is unconstitutional, arbitrary, confusing, and will produce *ad hoc* decisions. In contrast, by focusing on the *act* that a statute makes criminal, the result is predictable and clear.

1. The Eighth Circuit correctly determined that the money laundering offenses were "committed" in Florida.

By focusing on the acts made illegal by the money laundering statutes to determine where the crime was "committed", it becomes abundantly clear that, in the instant case, venue is in Florida, not the Western District of Missouri. Count II of the indictment, see App., Pet., 19a-20a, charges Respondent with a violation of 18 U.S.C. § 1956(a)(1)(B)(ii), making it a crime to "knowing[ly] . . . conduct[ ] or attempt[ ] to conduct . . . a financial transaction[25] which . . . involves the proceeds of specified unlawful activity . . . knowing that the transaction is designed in whole or in part . . . to avoid a transaction reporting requirement under State or Federal law." Clearly, the key terms in the statute, and thus, where the crime is committed (*i.e.*, the actus reus element) is where *the defendant* "conducts . . . a financial transaction." Of course, the act must be done with the requisite intent to be criminal (*i.e.*, "to avoid a transaction reporting requirement under State or Federal law" and "knowing that the

[25] The "term 'financial transaction' means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree." 18 U.S.C. § 1956(c)(4). Specifically, Count II of the indictment charged Cabrales with the "withdrawal" of money from a financial institution, App., Pet., 19a.

property involved in [the transaction] represents the proceeds of some form of unlawful activity"). Proving the status or categorical delineation of the money that is laundered, (*i.e.*, that it "in fact involves the proceeds of specified unlawful activity," 18 U.S.C. § 1956(a)(1)), is not the "acts of the defendant [that] constitute[ ] the violation", *Anderson*, 323 U.S. at 705, but rather is an "attendant circumstance" element and is therefore not relevant for purposes of determining venue. *Id.* It is clear that what was charged in Count II of the indictment (*i.e.*, the "withdrawal" of money from a financial institution, App., Pet., 19a) occurred in Florida.[26] The alleged conduct which constituted the crime began and ended in a Florida bank on January 23, 1991. The Eighth Circuit correctly held that venue is not proper in the Western District of Missouri for Count II. App., Pet., 9a.

The same analysis applies to Count III. See App., Pet., 20a. Count III of the indictment charged Cabrales with a violation of 18 U.S.C. § 1957(a), which makes it a

[26] Under the language of the statute, the punishable *conduct* is "conduct[ing] a financial transaction" under certain circumstances. One such circumstance includes a financial transaction involving money derived from specified unlawful activity. The commission of the act of the crime that constitutes the specified unlawful activity is not itself a part of the criminal conduct being committed by the money laundering defendant; merely the conduct in question has to "involve" the "proceeds" of a crime (which crime may have been committed by people entirely uninvolved in the money laundering crime itself.) That prior crime is not part of the commission of the money laundering offense. That prior crime is merely a "predicate circumstance" act whose proceeds are "involved" in the acts that constitute the money laundering offense.

crime to "knowingly engage[ ] or attempt[ ] to engage in a monetary transaction[27] in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity." Like a prosecution under section 1956(a)(1), the status or categorical delineation of the money involved in the prohibited transaction, *i.e.*, that it is "criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity," is an "attendant circumstance" element, not the element of the crime that is the "acts of the defendant [that] constitute[ ] the violation." *Anderson*, 323 U.S. at 705. It is therefore not relevant for purposes of determining venue. *Id.* Rather, venue is proper in the district where the defendant "knowingly engages or attempts to engage in a monetary transaction." It is clear that what was charged in Count III (*i.e.*, the "deposit of a monetary instrument", App., Pet., 20a) occurred in Florida. The alleged conduct of the defendant which constituted the crime began and ended in a Florida bank on January 22, 1991. The Eighth Circuit correctly held that venue does not lie in the Western District of Missouri for Count III. App., Pet., 9a.

Under the test derived from this Court's decision in *United States v. Anderson*, 328 U.S. 699 (1946), Cabrales "was not accused of a 'continuing offense.' She was charged with money laundering, for transactions which

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[27] Monetary transaction is defined as "the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce of funds or a monetary instrument . . . by, through, or to a financial institution. . . . " 18 U.S.C. § 1957(f)(1). Specifically, Count III charged Cabrales for the "deposit" of a monetary instrument, App. Pet., 20a.

began, continued, and were completed only in Florida." App., Pet., 4a. The Eighth Circuit correctly found that "[t]he only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which Cabrales [is alleged to have] executed only in Florida. Under these facts . . . the District Court correctly dismissed Counts II and III as improperly venued in Missouri." App., Pet., 9a.

B. Permitting venue based on the location of any "essential element" of a crime would inject confusion into the law, and would announce an unworkable test that would produce absurd results.

In its brief, the government concedes that "[i]n the context of [some] federal statutes, the location of the acts establishing a particular element may not reasonably be regarded as an appropriate forum for prosecution of the offense." Br. for Petitioner, 16. Then, in a footnote, the government acknowledges that a defendant charged with being a felon in possession of a firearm cannot necessarily be prosecuted wherever the firearm was manufactured or previously transported in interstate commerce, even though "affecting commerce" is an element of the crime. Br. for Petitioner, 16 n.5. This concession of the government demonstrates some of the problems with the "essential elements" test. First, because it denotes the conceptual error in the "essential elements" test – a crime is not "committed" every place one of the elements occurs. Second, it demonstrates that the government's test is extremely difficult to administer. How are courts to determine when a particular element is not sufficiently

important to confer venue? What distinguishes an "essential" element from a "non-essential" element under the government's test? While the government concedes that a § 922(g) prosecution cannot be had where the firearm was transported in interstate commerce, what about where the underlying felony was committed? Will it concede that too? Or is that something a court will have to decide separately for every element of every federal crime on an *ad hoc* basis? Or does the government just want an unprincipled, special venue rule for money laundering prosecutions?

Applying the government's "essential elements" test to a variety of federal offenses demonstrates its shortcomings, which has already been done as to prosecutions for receipt of stolen property, felon in possession of a firearm, and a prosecution under 18 U.S.C. § 922(k). Other examples abound. For instance, federal law prohibits "deposit[ing]" or "receiv[ing]" mail matter in furtherance of a scheme to defraud, see 18 U.S.C. § 1341; although the scheme to defraud is an essential element of the crime, venue is proper only where the mail is "deposited" or "received",[28] not where the scheme was conceived. The same analysis applies to a violation of 18 U.S.C. § 668(b)(2), which makes it a crime to "exhibit[ ]' or "dispose[ ] of" an "object of cultural heritage" knowing

[28] Crimes that prohibit "use of the mails" as an essential element qualify as continuing offenses. See 18 U.S.C. § 3237(a). However, such crimes are not co-extensive with or inclusive of all crimes committed with any nexus to the mail (*e.g.*, some statutes, such as 18 U.S.C. § 1341, criminalize something other than "use of the mails", even though mailings necessarily occur in the course of the crime).

that the object was stolen, if in fact it was stolen from a museum. The prosecution should not be had where the museum is located, but only where the defendant "exhibited" or "disposed" of the object. Similarly, 18 U.S.C. § 495 makes it a crime for any person to "utter[ ]" or "publish[ ]" as true any forged or counterfeited writing. In such a case, venue is proper only where the defendant "uttered" or "published" the forged instrument, not in the district where somebody else forged it. The same analysis holds true to other criminal offenses[29] that contain similar status or precondition elements, *i.e.*, "predicate circumstances".

All these examples demonstrate that an "attendant circumstance" element – while an absolutely essential element of the crime[30] – cannot confer venue because that is not where the crime was "committed". In contrast to the unworkable "essential elements" test, the "acts" test is simple and predictable, and gives the lower courts workable guidelines to determine the proper venue. Most important, however, the "acts" test is *constitutional* whereas the "essential elements" test would produce results that violate the constitutional venue provisions.

[29] *See, e.g.*, 18 U.S.C. § 2312 (interstate transportation of stolen vehicle); 18 U.S.C. § 2313 (receipt or sale of a stolen motor vehicle or aircraft); 18 U.S.C. § 2314 (interstate transportation of stolen property).

[30] To be sure, "attendant circumstance" elements are "essential elements" of the offense and they must be proven beyond a reasonable doubt; indeed, they are essential to the understanding of what makes the act criminal (*e.g.*, armed robbery is stealing "with a gun"); however, they are not elements which confer venue.

This Court's statement in *United States v. Lombardo*, 241 U.S. 73, 78 (1916), is an apt response to the government's "essential elements" test: "In instances it might, indeed, be convenient; in others, and most others, it would result in confusion and controversies . . . . We hesitate, in order to accommodate the venue of a particular offense, to introduce such confusion."

III. The crimes for which Respondent was indicted were allegedly "committed" within Florida.

A. The underlying criminal conduct is not an element of money laundering.

Petitioner argues that because "an essential element" of the money laundering offenses is that the funds in question must be derived from "specified unlawful activity", Br. of Petitioner, 14, the district in which the unlawful activity occurred is a proper venue for a money laundering prosecution. This argument assumes that venue can be based on the location of elements other than the "actus reus" of the crime, which is incorrect. Moreover, proving that money is "the proceeds of specified unlawful activity" is different than proving the *commission* of certain specified unlawful activity. See *United States v. Smith*, 44 F.3d 1259, 1264 (4th Cir. 1995) ("While it is necessary in order to include such an allegation [that the money be derived from specified unlawful activity], the requirement is merely a categorical delineation of the type of funds that are subject to a money laundering charge.").

In proving that the money in question "involves the proceeds of specified unlawful activity," it is irrelevant

who committed the underlying illegal activity, specifically *when* it was committed, *where* it was committed, or *how* it was committed – the government must simply show that the money in question "involves the proceeds of specified unlawful activity." See *United States v. Gabel*, 85 F.3d 1217, 1224 (7th Cir. 1996) ("The particular nature or time of those earlier crimes is immaterial"); *United States v. Ospina*, 798 F.2d 1570, 1581-82 (11th Cir. 1986) (no allegation that defendant participated in underlying illegal activity, but defendant nonetheless convicted of money laundering); *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995) (the "core of money laundering, which distinguishes one such offense from another, is the laundering transaction itself."). In *United States v. Gabel*, 85 F.3d 1217 (7th Cir. 1996), the court recognized: "Only when the effort to conduct the financial transaction described by the statute begins does the relevant conduct commence for money laundering itself. Before that, an individual has simply committed burglary, drug dealing, bank robbery, or any of the myriad illegal activities that might lead to ill-gotten wealth. . . . Thus, the commission of the [underlying] illegal acts [that produced the money that was laundered] cannot be considered the 'commencement' of [money laundering]." *Id.* at 1224.

Thus, the government is not required to prove, in connection with a money laundering offense, the particular acts that constituted the specified unlawful activity. It might be enough, for example, for the person who brought the money to the launderer to testify that he was told by the people who gave him the money that it was derived from narcotics activity, without specifying where, when, or how those acts were committed. But if the

underlying acts do not even need to be specifically proven for the crime of money laundering to be proved, the government's contention that such acts are an "essential element" of the crime that can confer venue is plainly wrong.

B. The crime of money laundering is committed only where the actual acts of money laundering occur, not where the underlying "specified unlawful activity" occurred.

The government's argument that money laundering is merely a continuation of the underlying drug transaction and that, therefore, it can be prosecuted where the drug transaction took place suffers from two problems. First, the premise of the government's argument is wrong: money laundering is not merely a continuation of the underlying drug offense. Congress created a separate crime of money laundering[31] precisely to reach individuals who could not otherwise be prosecuted as part of the drug conspiracy,[32] as aiding and abetting the drug transaction, or serving as accessories after the fact. That Congress proscribed money laundering so as to hinder drug traffickers from profiting from their separate crime does not mean that money laundering is a residual part of the drug crime itself. Indeed, money laundering is no more part of the drug crime than interstate transportation of a unlicensed firearm is part of the murder that is committed with the firearm, even though Congress arguably

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[31] See footnote 35, *infra*, and cases cited therein.

[32] *See* S. Rep. No. 99-433 (1986), *supra*, n.24.

prohibited the interstate transportation of such weapons so as to make murder-for-hire more difficult to accomplish.

Second, even if a money laundering offense was, in some sense, a continuation of the drug crime, that fact by itself is insufficient to allow the government to prosecute money launderers where the drug crime is committed. At bottom, this argument by the government equates money launderers with accessories after the fact; indeed, according to the government, a money launderer is merely an accessory after the fact to the drug crime.[33] Even so, it is far from certain that an accessory after the fact could be prosecuted in the district where the underlying crime was committed, if the accessory's acts occurred in a different

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[33] Accessory after the fact is a generous comparison to money laundering because accessories must have the intent to assist the criminal in some way; in other words, there is some basis for linking the accessory to the underlying crime and holding them accountable, at least in part, for that crime. Indeed, the punishment for accessories is determined by reference to the punishment for the underlying crime. Money laundering, in contrast, has no substantive link to a specific underlying crime: the money launderer need not have an intent or knowledge regarding the underlying crime. Moreover, the punishment for money laundering is not set by reference to the underlying crime. Thus, the link between money laundering and the underlying crime is far weaker than the link between accessories and the underlying crime, and, consequently, there is an even weaker basis for allowing the government to prosecute money launderers where the underlying crime is committed. And, of course, Cabrales was not charged as an accessory after the fact; she was charged with the substantive violation of money laundering, a crime allegedly "committed" entirely within Florida.

district. *See United States v. Potamitis*, 739 F.2d 784, 791-92 (2nd Cir. 1984) (venue for accessory after the fact was properly laid in the district where the underlying crime was committed because the accessory engaged in acts in that district). Of course, if an accessory after the fact whose actions occurred exclusively outside the district of the crime cannot be prosecuted where the underlying crime took place, then it follows *a fortiori* that an alleged money launderer whose actions were limited to Florida cannot be prosecuted in Missouri where the underlying drug transaction occurred.[34]

C. Money laundering does not "begin" with the commission of the underlying "specified unlawful activity."

The crime of money laundering "begins" when the financial transaction is undertaken, not when the separate underlying crime occurs. See *Gabel*, 85 F.3d at 1224. If a drug dealer sells a vial of crack cocaine for ten dollars, that is not the "beginning" of money laundering. If that drug dealer takes the ten dollars directly to the grocery and buys a loaf of bread and some milk, or puts it in a sack under his mattress, no money laundering offense occurs. It is only if the drug dealer undertakes to engage in a financial transaction that satisfies the conditions of

[34] This is not inconsistent with the fact that acts of aiders and abettors in a crime may confer venue, see Br. of Petitioner, 21, because accessories after the fact are not true accomplices; unlike true aiders, for example, they are not guilty of the underlying offense, but of a separately defined crime, with a different level of punishment. *See* 18 U.S.C. §§ 2, 3.

the money laundering statute that he has begun to commit the separate, additional crime of money laundering.[35]

This does not mean that the money "being" the fruit of unlawful activity is not an element of the crime. To be sure, it is an element of money laundering – but it is an "attendant circumstance" element or "predicate circumstance", not a part of the *act* element. The crime of money laundering does not "start" until the financial transaction

[35] It is clear that money laundering constitutes a separate, distinct crime that follows in time the underlying illegal activity. *United States v. Heaps*, 39 F.3d 479, 486 (4th Cir. 1994). *See also United States v. Edgmon*, 952 F.2d 1206, 1213 (10th Cir. 1991) ("Congress appears to have intended the money laundering statute to be a separate crime distinct from the underlying offense that generated the money to be laundered."). The crime of money laundering, by definition, cannot occur until after the completion of the underlying "specified unlawful activity." 18 U.S.C. § 1956(a)(1); *United States v. Edgmon*, 952 F.2d at 1214 ("Congress aimed the crime of money laundering at conduct that follows in time the underlying crime rather than to afford an alternative means of punishing the prior 'specified unlawful activity.' "); *United States v. Savage*, 67 F.3d 1435, 1441 (9th Cir. 1995) ("Congress considered money laundering to be separate conduct occurring after completion of the underlying criminal offense."). Indeed, in *United States v. Dimeck*, 24 F.3d 1239, 1246 (10th Cir. 1994), the Court recognized that it "stressed in *Edgmon* that a violation of § 1956(a)(1)(B)(i) must 'follow in time' the completion of the underlying" unlawful activity. This analysis is also true to a section 1957 violation. See *Savage*, 67 F.3d at 1442 ("we conclude that 'criminally derived property' under § 1957 is equivalent to 'proceeds' under § 1956, i.e., funds obtained from prior, separate criminal activity."); *United States v. Johnson*, 971 F.2d 562, 569-570 (10th Cir. 1992) ("criminally derived property" is the proceeds obtained by the defendant from an underlying criminal offense before the defendant engages in the monetary transaction prohibited by section 1957).

is undertaken just as the crime of "felon in possession" does not "begin" with the prior felony. That crime "begins" when the felon first acquires the gun; the conviction for the earlier felony is just a precondition to the acquisition of the gun being unlawful rather than lawful. By stating that a crime "begins"[36] on the occurrence or happening of an "attendant circumstance" element (*i.e.*, a "predicate circumstance" element), the government attempts to redefine what is a "continuing offense" so as to render the constitutional venue provisions meaningless.

D. By attempting to base venue on an "attendant circumstance" element, the government attempts to redefine what is a "continuing offense".

Interstate transportation provides the best example of what is a "continuing offense". See, *e.g.*, *United States v. Freeman*, 239 U.S. 117 (1915); *Armour Packing Co. v. United States*, 209 U.S. 56 (1908). In *Armour Packing*, the defendants were convicted of a crime making it unlawful to transport goods at rates below the published tariffs. 209 U.S. at 70-71. The Court reasoned that "transportation" was "the essence of the offense" and held that the crime

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[36] Similar to the statute of limitations issue raised in footnote 21, under the government's theory, a drug dealer could take the money generated by his illegal trade and put it under his mattress for five years, waiting for the statute of limitations to run on the money laundering crime. Then the drug dealer could conduct a financial transaction which constitutes money laundering and possibly avoid prosecution based on the statute of limitations.

was committed, and, thus, venue was proper, "[w]herever such transportation is received." *Id.* at 72. The Court applied the "continuing offense" doctrine because "transportation equally takes place over any and all of the traveled route, and during transportation the crime is being constantly committed." *Id.* at 76.

A true "continuing offense" is also exemplified by *United States v. Cores*, 356 U.S. 405 (1958). In *Cores*, the defendant was convicted of a crime that punished "any alien crewman who willfully remains in the United States" after the expiration of a landing permit. *Id.* at 408. Not surprisingly, the Court determined that, after the permit expired, the statute was continually violated "until [the defendant] physically leaves the United States." *Id.* at 409. The Court, in finding the crime to be a "continuing offense", held that the defendant engaged in the proscribed criminal conduct of "remaining" in each place the defendant went after the permit expired. *Id.*

As is demonstrated by *Armour Packing* and *Cores*, a true "continuing offense" begins where the defendant has taken all actions necessary to be prosecuted (the crime is complete) and ends where the defendant discontinues his actions.[37] It is important to recognize, however, that just

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[37] This analysis is true when dealing with an offense that contains only one actus reus element, such as money laundering. Complex, multiple-act crimes such as RICO violations and conspiracies are not complete until the criminal purpose has been accomplished, but because the "agreement" is constantly being performed it is a "continuing offense". For purposes of this case, it is enough to say that no proscribed criminal acts of money laundering occurred in Missouri, and thus venue is not proper in that State.

because a particular statute is *capable* of being a "continuing offense", does not mean that it *is* a "continuing offense" in all circumstances – to be a "continuing offense" the *act itself* must have been "committed" in different districts. In this sense, of course, money laundering is *capable* of being a "continuing offense", (*e.g.*, defendant wire transfers money between various banks in different States); however, this is not what the government claims. The government's claim is much broader: a rule allowing for prosecutions in different districts even though all of the alleged acts of the money launderer took place in one district. To be guilty of a continuing offense, it must be the defendant himself who acts or directly causes an act in that district.[38] The alleged actions of Cabrales occurred exclusively within Florida; therefore, the alleged crime cannot be a "continuing offense".

The facts of the instant case do not warrant a "continuing offense" analysis. Cabrales was not charged with the underlying illegal activity – the alleged source of the money that was laundered. Cabrales was charged with certain crimes that involved certain alleged financial transactions that allegedly occurred in one place at one time. Venue must be decided on the charges that the government has filed. Anything else would make a mockery of the constitutional provisions and court rule[39] that ensure a defendant the absolute right to be tried where

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[38] As noted in footnotes 1 and 2 above, aiding and abetting, conspiracies, and racketeering permit acts of another to be imputed to the defendant. For the reasons stated in those footnotes, this case does not present such an issue.

[39] See FED. R. CRIM. P. 18.

the alleged crime was "committed". The "continuing offense" analysis is wholly inappropriate when the alleged conduct that constituted the offense spanned only several minutes in a Florida bank.

Considering the offenses charged, the Eighth Circuit was correct in holding that Respondent "was not accused of a 'continuing offense.' She was charged with money laundering, for transactions which began, continued, and were completed only in Florida." App., Pet., 4a.

IV. Prosecuting the instant money laundering offenses anywhere other than Florida, where the crime was "committed", would disrespect the constitutional provisions and the policies underlying them.

A. The Constitution demands that crimes be prosecuted where the crime is "committed".

The constitution demands that crimes be prosecuted where the crime takes place. As the Court cautioned in *Johnson*, an expansive interpretation of venue could lead to needless hardship on the accused who is forced to defend himself far from home and available defense resources, and could lead to "the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution." 323 U.S. at 275; *Travis v. United States*, 364 U.S. 631, 634 (1961) ("We are also aware that venue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of 'a tribunal favorable' to it.").

A money launderer who spent his whole life in New York, processing cash for a variety of criminal enterprises, about whose extent, location, and criminal acts he

is unaware, is a wrongdoer who should be punished, but his bad acts are "committed" in New York. Under the government's theory he could be prosecuted wherever the "dirty" money came from, which may be a variety of different places, and this could be done regardless of whether he was being tried together with the perpetrators, whether he knew them or whether he even had any idea that the money he laundered came from a specific place or from those particular activities. This seems wrong because it is wrong.

B. The Constitutional safeguards of venue are for the protection of the accused, not the government.

As noted by the government, the constitutional venue provisions are, first and foremost, for the protection of the accused. Br. of Petitioner, 23-24. It may be more convenient for the government to prosecute Cabrales in Missouri,[40] but the Constitution is concerned about what is convenient for Cabrales (and other persons accused of crimes) who may have never left Florida and may never have known where the money originated, much less that it came from drug transactions in Missouri.

In rejecting a similar argument to what the government now makes to this Court, the United States Court of

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[40] It would also have been efficient and advantageous to the government to try the Unabomber's murders all at once (and it could have been joined under Rule 8 if they all took place in the same State) but they did not, so there had to be separate proceedings in California and New Jersey.

Appeals for the Third Circuit stated: "Essentially, the government wants to have the *option* of venue – that is it does not want to be *restricted* to trying these cases" where the violation occurred. *United States v. Palma-Ruedas*, 121 F.3d 841, 850 (1997). The Third Circuit had little sympathy for the government's argument regarding the hardship and inconvenience of having to prosecute the crime where it was committed. *Id.* The court stated: "Many constitutional guarantees for criminal defendants are inefficient and costly – right to counsel comes to mind. Nevertheless, these guarantees form the bedrock principles of our criminal justice system and should not be hastily balanced away."[41] *Id.*; see also *United States v. Johnson*, 323 U.S. 273, 276 (1944) ("If an enactment of Congress equally permits the underlying spirit of the constitutional concern for trial in the vicinage to be respected rather than to be disrespected, construction should go in the direction of constitutional policy. . . . ").

The right to be tried where the crime was "committed" was one of the most important right to the framers of the Constitution.[42] It was one of the few rights

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[41] Arguably all of the constitutional safeguards that are contained in the Sixth Amendment are costly and inefficient, but this does not mean that they should not be respected. Indeed, the rights contained in the Sixth Amendment are the most fundamental principles of our criminal justice system.

[42] The venue provisions contained in the constitution were in reaction to English laws that permitted colonists as well as British soldiers to be tried in England when the alleged crime was committed in America. See Drew L. Kershen, *Vicinage*, 29 Okla. L. Rev. 801, 806-808 (1976). Resentment against these laws was so deep that the Declaration of Independence denounced King George III "[f]or transporting us beyond Seas to be tried

included in both the original text of the Constitution and the Bill of Rights. As one commentator put it: "With the adoption of [Article III, sec. 2, cl. 3], citizens of the United States were assured that constitutional limitations on venue had been established. Citizens could not be transported beyond the boundaries of the state in which the crime had been committed for the trial of the crime." Drew L. Kershen, *Vicinage*, 29 Okla. L. Rev. 801, 808 (1976). The later adoption of the Sixth Amendment built on this fundamental right afforded to criminal defendants.

C. The government's policy argument misperceives the purpose of money laundering statutes and the issues presented at the prosecution of a money laundering offense.

The government asserts that in many money laundering cases, the dispute will be about the origin of the funds, and evidence of that will best be found where the funds were generated. Br. of Petitioner, 25-26. The government has cited no authority for this counter-intuitive assertion. It would be unusual for the defense in a laundering case to deny that there were drug transactions in Missouri, especially when the drug dealers have already been convicted. See Br. of Petitioner, 6, n.1. The question is whether the proceeds can be traced to the money that

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for pretended offenses." *Id.* at 807. Indeed, this practice of England has been described as one of the precipitating factors of the American Revolution. *See, e.g.*, William W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59, 63-67 (1944).

was laundered, whether the defendant knew that they were the fruits of illegal activity, whether the defendant intended to conceal their origin, etceteras. These are all issues as to which the evidence is more likely found where the launderer operated and received the money than where the underlying crimes took place.[43]

The government's policy argument is not only flawed in failing to understand that the central events in a money laundering prosecution occur where the prohibited financial transaction occurred, but also that the crime of money laundering has as its gravamen issue the misuse of financial institutions and vehicles. See 18 U.S.C. §§ 1956, 1957. Therefore, it is very much in Florida's interest – just as it is in Missouri's interest to interdict drug sales – to deter the misuse of its financial institutions by criminals. The legislative history, relied on by the government, supports this analysis. See Report of the Senate, *supra*, footnote 24. Florida has a much stronger interest in prosecuting the money laundering charge, just as Missouri had the stronger interest in prosecuting the underlying drug charges, (which it did prosecute).

Finally, the key requirement of the Sixth Amendment is that the *jury* be drawn from the district where the crime was "committed". It is possible that a Florida jury may look differently on certain kinds of banking transactions

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[43] Furthermore, this argument is irrelevant, both because policy considerations can never trump the Constitution and also because the government has never claimed that it could not prosecute Cabrales in Florida. Therefore, the "crocodile tears" the government sheds over how difficult it would be for Cabrales to defend herself in Florida are disingenuous.

than a Missouri one. For example, a metropolitan coastal community with a high population of immigrants might look very differently on the act of wiring money abroad to their families than a rural community in Missouri, where wiring money to foreign countries seems unusual in itself. Moreover, the prosecutors themselves may have different attitudes regarding whether certain acts justify prosecution.

D. The "acts" test, while upholding the constitutional venue provisions, will not seriously impede the effective prosecution of criminals.

The government suggests that it must have the ability to try the underlying criminal activity with money laundering charges to conserve scarce resources. See Br. of Petitioner, 26 ("A requirement that money laundering charges be filed in the district where the defendant's financial transactions are alleged to have occurred would impair the efficient conduct of such prosecutions."). To begin, this is an overstatement – the "inconvenience" to which the government refers is an "inconvenience" that the government routinely lives with in the enforcement of the federal criminal law, without any apparent serious detriment. To take a simple and recurrent venue problem, prosecutors are routinely faced with multistate narcotics conspiracies, in which substantive crimes of importation, possession, and distribution take place in a variety of states. It would surely be "convenient" for the government to try all these crimes at once, but the government must choose either to bring separate prosecutions in the different districts or to confine itself to the charges that can be joined in one prosecution in the venue where most

of the crimes occurred. Given the seriousness of the penalties applicable to all of these offenses, the government manages quite successfully to prosecute drug cases despite its inability to combine all of the substantive counts in the same trial. There is no reason why the same should not be true of money laundering. Often more than one crime will, in fact, be committed in the same district, and therefore such claims can be tried together. In other cases, the money launderer can be prosecuted for participation in the narcotics conspiracy, and if convicted of that crime, there will be no particular need to try the separate money laundering cases in the other district. However, the government has that option if the defendant is acquitted or if the government thinks it worth the effort to attempt to secure another conviction. These are everyday problems in the prosecution of narcotics enterprises, and there is nothing special or unique about money laundering that should even tempt the Court to twist its normal understanding of venue rules to accommodate a supposed law enforcement need.

In summary, the "acts" test will not seriously impede the effective prosecution of money launderers or other criminals, as the government suggests. Indeed, it will be a rare situation[44] in which the government will have "to

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[44] This is especially true considering the widespread use of the general conspiracy statute, 18 U.S.C. § 371, and the aiding and abetting statute, 18 U.S.C. § 2(a). As noted previously, if the money launderer were a coconspirator in the underlying crimes, and the laundering were committed in furtherance of that conspiracy, while the laundering charge itself could not be venued in Missouri, the defendant could be charged with conspiracy to commit the underlying crime and tried in

choose between undertaking duplicative efforts to prove the existence of the "specified unlawful activity" or "forego[ ] the money laundering prosecution", Br. of Petitioner at 26, and, if such a situation occasionally presents itself, the government's complaint is with the Framers who, in both the Constitution and the Bill of Rights, required all crimes to be prosecuted in the State where they were committed.

CONCLUSION

The decision of the United States Court of Appeals for the Eighth Circuit should be affirmed.

Respectfully submitted,

JOHN W. ROGERS
Attorney for Respondent

March 1998

Missouri, and the money laundering could be proved at that trial as an overt act in furtherance of the conspiracy.

Supreme Court, U.S.
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No. 97-643

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

In our opening brief we explain that for purposes of the relevant venue provisions, the offense of money laundering is "committed" in, *inter alia*, the district where the laundered funds are unlawfully acquired. Respondent's principal argument is that the unlawful generation of the funds—while concededly "an element of money laundering"—"is an 'attendant circumstance' element or 'predicate circumstance', not a part of the *act* element." Resp. Br. 35. She contends that "[v]enue must be based on the 'actus reus' element of the crime" and "cannot be based on the locality (if one exists) of any of the other elements of the offense, *i.e.*, 'attendant circumstance' elements." Resp. Br. 23. Respondent's reliance on an "attendant circumstances" test finds no support in this Court's

cases, and neither it nor the variations of it she proposes provide a sound and workable rule for determining where a crime is committed for purposes of laying venue.

A. Under The Relevant Constitutional And Statutory Provisions, Venue In A Criminal Prosecution Is Not Limited To The District Or Districts In Which The Defendant Personally Committed An Unlawful Act

It is not altogether clear how respondent would distinguish the "attendant circumstances" of a criminal offense from the "acts" that constitute the crime. The narcotics trafficking that is alleged to have generated the funds at issue in this case plainly constitutes "acts." Those acts, moreover, are integral to the crime of money laundering, since exposure (and thus prevention) of the predicate "specified unlawful activity" is the central objective of the money laundering prohibition. In characterizing the unlawful origin of the funds as an "attendant circumstance" rather than as part of the "actus reus," respondent appears to mean only that the defendant in a money laundering prosecution need not be shown to have *personally* committed the underlying narcotics crimes. See Resp. Br. 8 n.1 ("This Court's precedent strongly supports the notion that it is the acts—and only the acts—of the defendant for which he is being punished that will confer venue in a certain district.").

That view cannot be reconciled with this Court's precedents. As we explain in our opening brief, decisions of this Court and the courts of appeals have identified two principal bases for finding that a criminal offense was "committed," for purposes of the relevant venue provisions, in a district where the

defendant is not alleged to have personally committed any criminal act. Those decisions establish that a federal criminal prosecution may be brought in the district where (1) the defendant's confederates committed illicit acts that may fairly be attributed to the defendant, or (2) the effects of the defendant's misconduct are felt. See Gov't Br. 19-22. Both of those principles support prosecution of respondent in the Western District of Missouri.[1]

1. Where a defendant's criminal acts are performed in concert with other wrongdoers, he may be prosecuted in the district where a confederate committed an element of the charged offense. Thus, a defendant may be prosecuted for conspiracy in any district where a co-conspirator committed an overt act in furtherance of the conspiracy; an aider and abettor may similarly be prosecuted in the district where the principal committed the substantive offense. See Gov't Br. 20-21 & nn.9-10. Although trial in such a district

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[1] As we explain in our opening brief, a criminal offense is typically defined by reference to its elements and should, as a general matter, be regarded as having been "committed" in every district where conduct establishing an element of the offense occurs. Gov't Br. 15-16. Respondent's efforts (see, *e.g.*, Resp. Br. 17-20, 28-29) to identify isolated federal statutes for which the location of a particular element would not be an appropriate site for trial do not cast doubt on the validity of that general proposition. In any event, respondent provides no sound basis for concluding that venue in a money laundering prosecution is improper in the district where the "specified unlawful activity" took place, given that prosecution in that district (1) substantially furthers the purposes of the relevant constitutional and statutory provisions, and (2) is consistent with this Court's decisions holding that criminal charges may be brought where the defendant's confederates acted or where the effects of his conduct were felt.

may be less convenient for the defendant than trial at the site of his own misconduct, it exposes him to no fundamental unfairness. By choosing to act in combination with other wrongdoers, an individual assumes the risk that their actions will, for various purposes—including the determination of proper venue—be attributed to him. See *Hyde* v. *United States*, 225 U.S. 347, 362-364 (1912).[2]

Respondent acknowledges, and appears to accept, the application of that rule to conspiracy and aiding and abetting offenses. See Resp. Br. 8 n.1, 10 n.2 ("Courts have reasoned that the defendant's own act —that of agreeing or signing on to the conspiracy or the organization—incorporates by reference the acts of others and makes him vicariously liable for them.") (citing *Hyde*). She contends, however, that "[i]n the money laundering context * * * there is no act by the defendant that signals agreement with the underlying crimes, even though they may be predicates for

[2] As respondent points out (see Resp. Br. 7-8, 12), two of this Court's decisions contain dicta that, read in isolation, might suggest that venue in a federal criminal prosecution is proper only at the site of the defendant's own misconduct. See *Johnston* v. *United States*, 351 U.S. 215, 220 (1956) (place where a crime is committed "is determined by the acts of the accused that violate a statute"); *United States* v. *Anderson*, 328 U.S. 699, 705 (1946) (determination of proper venue depends in part on "what acts of the defendant constituted the violation"). The Court in those cases had no occasion, however, to address the situation in which a defendant's liability under a criminal statute depends in part upon the commission of unlawful acts by another person. The decision in *Hyde* directly addresses that question and concludes that a defendant may properly be subjected to prosecution in the district where his co-conspirators committed overt acts in furtherance of the conspiracy. 225 U.S. at 356-367; see Gov't Br. 20-21.

the charged crime." Resp. Br. 10 n.2. That is incorrect. The money laundering offenses described in 18 U.S.C. 1956(a)(1)(B)(ii) and 1957(a) require the government to prove *both* that the funds in question were the product of "specified unlawful activity," *and* that the defendant knew the funds to have been unlawfully derived. See Gov't Br. 5. The evident purpose and effect of money laundering, moreover, is to facilitate the profitable commission of the predicate crimes. See Gov't Br. 16-17. An individual who commits the crime of money laundering therefore sufficiently "signals agreement with the underlying crimes" (Resp. Br. 10 n.2) that she can fairly be compelled to stand trial at the location where the predicate "specified unlawful activity" occurred.[3]

2. Where a criminal offense consists of setting in motion a chain of events culminating in harmful

[3] For essentially the same reasons, we disagree with respondent's contention (see Resp. Br. 17) that a prosecution for receipt of stolen goods (see 18 U.S.C. 2315) must be brought in the district where the goods were received rather than in the district where they were stolen. Respondent's reliance (see Resp. Br. 17 n.16) on *United States* v. *Bozza*, 365 F.2d 206, 220-221 (2d Cir. 1966), is misplaced. The court in *Bozza* held that the offense of receiving stolen stamps could not be prosecuted in the district where the defendant made and received telephone calls during which he agreed to purchase the stolen stamps and negotiated about their price. *Id.* at 220. Although the court in dictum characterized receipt of stolen goods as a "single step" crime, see *id.* at 221, it did not address the question whether the offense could be prosecuted in the district where the goods were stolen. To our knowledge, the only court of appeals to address that question has held that a prosecution under Section 2315 *may* be brought in the district where the theft occurred. *United States* v. *Melia*, 741 F.2d 70, 71-72 (4th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

effects at a distant site, the defendant may frequently be subject to prosecution in the district where those effects occur. That principle applies, for example, to offenses involving the use of the mails, as well as to prosecutions for obstruction of judicial proceedings or obstruction of interstate commerce. See Gov't Br. 19-20 & nn.7-8. As this Court recognized in *United States* v. *Johnson*, 323 U.S. 273, 275 (1944), "Congress may * * * provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates."

Prosecution of respondent in the Western District of Missouri is appropriate for analogous reasons. In the instant case, respondent is not charged with having *caused* the underlying narcotics crimes to occur. The *effects* of her offense were nevertheless felt in the Western District of Missouri, since the evil of money laundering consists precisely of its capacity to conceal, and thus facilitate, the predicate "specified unlawful activity." See Gov't Br. 16-17.

Respondent does not appear to dispute the proposition that criminal offenses may sometimes be prosecuted in the district where their harmful effects are felt, even where that is not the site of the defendant's own conduct. She argues, however, that because the crime of money laundering involves "the misuse of financial institutions and vehicles," the district in which the prohibited financial transactions occurred "has a much stronger interest in prosecuting the money laundering charge." Resp. Br. 43. That contention is without merit. The transactions forbidden by the money laundering statutes represent a "misuse" of financial institutions not so much because they can be expected to cause harm to the institutions themselves, but primarily because they serve to

facilitate the profitable commission of the predicate crimes. The harmful effects of violations of the money laundering statutes are therefore principally felt in the district where the "specified unlawful activity" occurs.[4]

3. Respondent contends that "an expansive interpretation of venue could lead to needless hardship on the accused who is forced to defend himself far from home and available defense resources." Resp. Br. 39. Respondent does not contend that *this* prosecution suffers from that infirmity—*i.e.*, that trial in the Western District of Missouri would require her to defend herself "far from home." To the contrary, the materials submitted to the district court indicate that respondent's overall contacts with the Western District of Missouri have been far more extensive than her contacts with Florida.[5]

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[4] The passage from the Senate Report on which respondent relies (see Resp. Br. 21 n.24, 43) does not suggest that the financial institutions through which the proceeds of criminal activity are laundered are properly regarded as victims of the laundering activities. To the contrary, it treats the professionals involved as accomplices in those activities. See S. Rep. No. 433, 99th Cong., 2d Sess. 4 (1986) ("Most disturbing is the increasing willingness of a few dishonest attorneys, accountants, and bankers to participate in these sophisticated schemes.").

[5] As we explain in our opening brief (see Gov't Br. 6 n.1), respondent's mother, brother, and husband were convicted in October 1992 of participating in a cocaine distribution conspiracy operating in the Western District of Missouri. The evidence presented at the trial of those individuals indicated that respondent lived with her husband in Jefferson City, Missouri, during the period when the conspiracy was in operation. See Gov't Response in Opposition to Defendant's Motion to Dismiss for Lack of Proper Venue, Attach. B, at 2 (filed June 4, 1996). In the district court proceedings in the instant

The more fundamental flaw in respondent's argument, however, is that the relevant constitutional and statutory venue provisions were never intended to guarantee a criminal defendant a right to be tried in the district of his residence. "[T]he geography prescribed" by the applicable venue provisions "is the district or districts within which the offense is committed," which "may or may not be the place where the defendant resides." *United States* v. *Anderson*, 328 U.S. 699, 705 (1946) (footnote omitted). Accord, *e.g.*, *Johnston* v. *United States*, 351 U.S. 215, 220-221 (1956) (constitutional venue and vicinage provisions "state[] the public policy that fixes the situs of the trial in the vicinage of the crime rather than the residence of the accused"). Rather, the requirement that a criminal offense be prosecuted in the State and district where it was committed serves (1) to increase the likelihood that relevant evidence can be discovered and presented at trial and (2) to enhance the ability of the community most directly affected by criminal conduct to observe and (through the jury) to participate in the administration of the criminal law. To permit money laundering offenses to be tried at the site of the "specified unlawful activity"—and, more generally, to permit criminal charges to be

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case, respondent submitted an affidavit stating that she lived in Florida from January 22, 1991, to January 28, 1991 (the period immediately surrounding the financial transactions alleged in the indictment, see Pet. App. 19a-20a), and that she had no contact with the Western District of Missouri during that seven-day period. See Affidavit of Vicki Cabrales in Support of Her Motion to Dismiss for Lack of Proper Venue (filed May 2, 1996). Respondent has not otherwise claimed to be a Florida resident or denied her substantial and longstanding contacts with the Western District of Missouri.

brought in the district where a defendant's confederates acted, or where the harmful effects of his crime are felt—substantially furthers those purposes. See Gov't Br. 23-28.[6]

As we explain in our opening brief (Gov't Br. 26), the rule adopted by the Eighth Circuit in this case may impair the efficient conduct of federal money laundering prosecutions, particularly in cases where the government seeks to try money laundering counts together with charges for the substantive criminal offenses that generated the tainted funds. Respondent contends that convenience to the government is an irrelevant consideration, on the ground

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[6] Respondent observes that "the government is not required to prove, in connection with a money laundering offense, the particular acts that constituted the specified unlawful activity." Resp. Br. 31. There are a variety of ways in which the government can prove that particular funds were derived from "specified unlawful activity." If the government proves that element in a manner that does not establish the location of the predicate crimes, it will presumably be required to bring the money laundering prosecution in the district where the financial transactions occurred. The fact that a money laundering prosecution will not *always* establish the situs of the "specified unlawful activity" does not, however, preclude the government from laying venue on that basis when the evidence *does* make clear where the predicate crimes occurred.

Congress has, for example, provided that an offense involving the use of the mails "may be inquired of and prosecuted in any district from, through, or into which" the mailing travels. 18 U.S.C. 3237(a). Section 3237(a) does not require the government to introduce proof of every district through which the mailed object has moved in order to obtain a conviction for illicit use of the mails. It simply provides that venue is proper in an intermediate district *if* the government chooses to present evidence that the mailing traveled through that district. The same principle applies here.

that "[m]any constitutional guarantees for criminal defendants are inefficient and costly." Resp. Br. 41 (quoting *United States* v. *Palma-Ruedas*, 121 F.3d 841, 850 (3d Cir. 1997), petition for cert. pending *sub nom. United States* v. *Rodriguez-Moreno*, No. 97-1139). The analysis to which respondent objects, however, finds clear support in this Court's decisions. In *Hyde*, the Court observed:

> It is not an oppression in the law to accept the place where an unlawful purpose is attempted to be executed as the place of its punishment, and rather conspirators be taken from their homes than the victims and witnesses of the conspiracy be taken from theirs. We must not, in too great a solicitude for the criminal, give him a kind of immunity from punishment because of the difficulty in convicting him * * *.

225 U.S. at 363. The Court thus recognized that although the pertinent venue rules are principally designed to protect the interests of the criminal defendant, they should not be construed in such a manner as to undermine the legitimate interests of the government and the victimized community. See also, *e.g.*, *United States* v. *Cores*, 356 U.S. 405, 409-410 (1958) ("It is hardly likely that the Congress would create the new sanction only to strip it of much of its effectiveness by compelling trial in the district where the crewman was present when his permit expired—a place which months or years later might well be impossible of proof.").[7]

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[7] Respondent notes that under the government's theory, "[a] money launderer who spent his whole life in New York, processing cash for a variety of criminal enterprises, about whose extent, location, and criminal acts he is unaware, * * * could be prosecuted wherever the 'dirty' money came from, which may be a variety of different places." Resp. Br. 39-40. That is the logical consequence of our position, but we see no impropriety in such a proceeding. An individual who holds himself out as a "full service" money launderer thereby assumes the risk of prosecution wherever the laundered funds turn out to have been generated. In such a case, the defendant's desire to be tried at the place of his residence (or at the place where his own criminal acts took place) is an insufficient basis for requiring the government to present in New York its evidence of "specified unlawful activity" occurring in other jurisdictions. Cf. *Hyde*, 225 U.S. at 363 ("rather conspirators be taken from their homes than the victims and witnesses of the conspiracy be taken from theirs").

B. The Tests For Determining Venue Proposed By Respondent Would Not Yield Coherent Or Predictable Results, And They Are Not Supported By This Court's Precedents

1. Respondent contends that the Western District of Missouri is not a proper venue for this prosecution because the illicit origin of the funds in question is an "attendant circumstance" of money laundering rather than part of the "actus reus." She acknowledges, however, albeit reluctantly, that in *some* circumstances a criminal prosecution may appropriately be brought in a district where a person other than the defendant performed an element of the charged offense. See Resp. Br. 8 n.1 & 9-10 n.2; see also pp. 3-5, *supra*; Gov't Br. 20-21 & nn.9-10. Having made that concession, respondent offers no principled basis—and certainly no mode of inquiry that offers the assurance of a bright-line rule—for differentiating elements that are part of the "actus reus" of the charged offense from elements that are part of its "attendant circumstances." Indeed, although respon-

dent treats the distinction between "actus reus" and "attendant circumstances" as though it were an established formula, she cites *no* case in which a court has relied on that distinction in resolving a question of venue.

2. Respondent also suggests (Resp. Br. 14-16, 23, 29) that a venue analysis focusing on the "key verbs" of a federal criminal statute will yield coherent and predictable results. Contrary to respondent's contention, rigid application of a "key verbs" analysis will lead to surprising and anomalous outcomes. See *United States* v. *Palma-Ruedas*, 121 F.3d 841, 863-864 (3d Cir. 1997) (Alito, J., dissenting), petition for cert. pending *sub nom. United States* v. *Rodriguez-Moreno*, No. 97-1139. The determination of proper venue, this Court has recognized, turns on "the nature of the crime alleged and the location of the act or acts constituting it." *Anderson*, 328 U.S. at 703. Consideration of the active verbs in the relevant criminal statute may be a useful step in the analysis, but there is no basis in logic or in this Court's decisions for treating it as the whole of the inquiry.[8] Rather than looking solely to the statutory verbs, courts should undertake a realistic appraisal of the "nature of the crime" defined by the statute.

[8] See *Palma-Ruedas*, 121 F.3d at 860, 862 (Alito, J., dissenting) (observing that "[t]he Supreme Court has never embraced the 'verb test,'" explaining that the application of constitutional venue provisions should not turn on whether Congress defines the offense through verbs or other grammatical forms, and stating that "while the 'verb test' may provide a useful first cut at determining venue, there are complicated crimes for which a rigid grammar-based test may not be appropriate").

3. Finally, respondent proposes a theory of what constitutes a "continuing offense" for purposes of the general federal venue statute that, in her view, renders venue improper in this case. Under applicable venue statutes, unless Congress specifies a different venue rule for a particular crime, "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. 3237(a). As we explain in our opening brief (see Gov't Br. 15-16), the offense of money laundering is "begun" with the generation of funds through "specified unlawful activity," and it is therefore subject to prosecution in the district where the predicate crime occurs.

Respondent disputes that analysis, arguing that "[t]he crime of money laundering 'begins' when the financial transaction is undertaken, not when the separate underlying crime occurs." Resp. Br. 34. She asserts more generally that "a true 'continuing offense' begins where the defendant has taken all actions necessary to be prosecuted (the crime is complete) and ends where the defendant discontinues his actions." Resp. Br. 37. It is far more natural, however, to say that a multi-element offense is "begun" in the district where the *first* of its elements occurs. Respondent's construction of Section 3237(a) cannot be reconciled with this Court's recognition that "where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916).

* * * * *

For the reasons stated above, and in the opening brief for the United States, the judgment of the court of appeals should be reversed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

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No. 97-643

In The

Supreme Court of the United States

October Term, 1997

UNITED STATES OF AMERICA,

Petitioner,

v.

VICKIE S. CABRALES,

Respondent.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Eighth Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether venue in a prosecution for money laundering under 18 U.S.C. §§ 1956 and 1957 is proper in the district where the illicit funds were generated, when the defendant's unlawful financial transactions occurred in another district?

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INTEREST OF AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nationwide, nonprofit voluntary association of criminal defense lawyers founded in 1958. NACDL is affiliated with 68 state and local criminal defense organizations and works cooperatively with them on issues related to criminal justice. NACDL speaks for more than 28,000 criminal defense lawyers nationwide.

NACDL seeks to promote the fair administration of criminal justice through adherence to the Bill of Rights. It also seeks to improve the quality of the American System of criminal justice and to educate bench, bar and public about it.

The primary concern of *amicus* in this case is the expanded potential for governmental forum shopping. If the Government's position is upheld, it would be an unprecedented and unwarranted expansion of the Government's power to choose the place of trial. A decision in favor of the Government would seriously impair the ability of defendants in future money laundering cases and perhaps in other complex crimes to receive a fair trial. Under the Government's theory, future defendants in such cases will be wrenched from the communities in which the crime was allegedly committed to distant

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[1] *Amicus* has filed letters from Petitioner and Respondent consenting to its submission of this brief on behalf of Respondent. In compliance with Rule 37.6, no person other than *Amicus* made a monetary contribution to the preparation or submission of the brief. Further, the brief was not written in whole or in part by a counsel for a party.

venues because a stranger, not a party to the case, may have committed other crimes not charged in the indictment. Being forced to stand trial while separated from family and friends, removed form employment or place of business, and often deprived of representation by the defendant's trusted counsel is potentially devastating to the ability to mount an effective defense.

The brief of *amicus* does not address every point argued by the parties. They have briefed the issues well and fully parsed the relevant case law. Duplication of these arguments will not benefit the Court's decisional process. *Amicus* therefore limits its presentation to two points which may assist the Court in deciding this case: (1) that the historical context for the venue privilege counsels against expanding the traditional "crime committed test" and (2) that the Government's reliance on the law of conspiracy and complicity to lay venue based on the acts of others not charged in the indictment is wrong.

STATEMENT OF THE CASE

Amicus accepts Petitioner's statement of the case.

SUMMARY OF ARGUMENT

The Constitution requires that venue lie at the place where the crime is alleged to have been committed. U.S. CONST. Art. III, sec. 2, cl. 3. This provision of the Constitution was adopted even before the Bill of Rights as a protection against governmental oppression. The Framers

responded to the fierce opposition of the Colonists to Acts of Parliament that allowed the Crown to force a defendant to trial in a foreign land or another colony. The outrage at the English colonial practice was not merely symbolic; it was grounded in the practical hardships imposed when a defendant was dragged away from family, friends and work and, sometimes his counsel, to stand trial in a distant locale.

Petitioner now asks this Court for an unprecedented and unwarranted expansion of its power to choose the venue for a criminal trial, by basing venue on the crimes of a stranger to the case, not where the defendant's crime was committed. The core of Petitioner's argument is a strained analogy to principles of group culpability under the laws of conspiracy and complicity. Yet, the indictment does not allege that the defendant acted in Missouri, either personally or vicariously through others as accomplices or conspirators, with respect to the dismissed money laundering charges. This venue demand is unfaithful to the constitutional command that trial be held where the crime was "committed" and more in keeping with the spirit of the English colonial laws.

The position of *amicus* is that, absent allegations in the indictment of any culpable involvement in the underlying crimes generating the "dirty" funds, venue for violation of federal money laundering laws must be in the district where the financial transactions – here, one deposit and four withdrawals – allegedly occurred. Basing venue on the actions of non-parties, where there is no allegation that the defendant participated in the underlying unlawful act, confers upon the Government a

forum shopping power that contravenes the venue clause.

ARGUMENT

I. THE HISTORY OF THE VENUE CLAUSE COUNSELS AGAINST AN EXPANSIVE INTERPRETATION OF THE PLACE WHERE AN ALLEGED CRIME IS COMMITTED.

The Constitution requires that venue lie at the place where the crime is alleged to have been committed:

> The trial of all Crimes, except in the case of impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such a Place or places as Congress may by Law have directed.

U.S. Const. Art. III, sec. 2, cl. 3. This Court has ruled that venue concerns in criminal trials

> are matters that touch closely the fair administration of criminal justice and public confidence in it. . . . Questions of venue in criminal cases, therefore, are not merely matters of formal legal procedure. They raise deep issues of public policy. . . .

United States v. Johnson, 323 U.S. 273, 276 (1944).

These deep issues of public policy arise because the venue clause is a protection against the arbitrary exercise of government power exemplified by English colonial laws that allowed the removal of criminal trials to vice-

admiralty courts. The Stamp Acts and the Townshend Acts of the 1760's, for example, empowered the vice-admiralty courts to try such cases. Defendants in vice-admiralty courts did not enjoy the right to jury trials. As a result, criminal cases that would be triable by jury in a colony's courts were heard by a sole judge sitting at the pleasure of the British Crown. Bernard Bailyn, The Ideological Origins Of The American Revolution, 108-109 (Harvard University Press 1992) (1967). Adding insult to injury, venue in may cases was set in Halifax, Nova Scotia, where the colonial defendants faced severe evils: defending themselves in a land foreign to them and without their own counsel, losing their land by the required absence, and an almost certain conviction at the hands of a legal system tilted against them. *Id*. Additionally, the Administration of Justice Act of 1774, another of the "Intolerable Acts," included a provision that allowed venue in other colonies or England for prosecutions of felonies committed by public officials. Alfred H. Kelly And Winfred A. Harbison, The American Constitution, Its Origins And Development 76 (Norton 1976) (1948).

In reaction to the Intolerable Acts, Edmund Burke noted that English venue would present particular hardship to colonial defendants: "brought hither in the dungeon of a ship's hold . . . he is vomited into a dungeon on land, loaded with irons, unfurnished with money, unsupported by friends, three thousand miles from all means of calling upon or confronting evidence." Albert W. Alschuler and Andrew G. Deiss, *A Brief History of Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867, 874 (1994) [quoting Edmund Burke, Letter To The Sheriffs Of

BRISTOL, THE WORKS OF THE RIGHT HONORABLE EDMUND BURKE 189, 192 (Little Brown, 9th ed. 1889)].

The Declaration of Independence also denounces these abuses: "He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation . . . For transporting us beyond Seas to be tried for pretended offenses." The Declaration of Independence, para. 16 (1776).

A leading treatise on criminal procedure summarizes the historical rationale for venue where the crime was committed:

> The crime-committed formula offered several elements of convenience for the defense. Relevant evidence would most readily be accessible at the place where the incident constituting the alleged offense had occurred. Any witnesses to the incident were most likely to live in the vicinity and any relevant tangible evidence was most likely to be found there. Trial in a distant place would impose upon the defendant the often-serious hardship of arranging for the transportation of such witnesses and tangible evidence.

LAFAVE AND ISRAEL, CRIMINAL PROCEDURE 741 (West 2d ed. 1992). Further, note the authors, "the crime committed formula often facilitated use of jury of the vicinage. . . . " *Id.*

One critic has observed that the crime-committed test bears "no necessary connection to the location of the victim, witnesses, documents or other similar factors. It does not take account of the residence of the accused. . . . "

Abrams, *Conspiracy and Multi-Venue in Federal Criminal Prosecutions: The Crime Committed Formula*, 9 U.C.L.A. L. Rev. 751 (1962). In other words, the goal of protecting a defendant's right to be tried close to home is not necessarily furthered by venue at the site of the alleged crime if it was committed away from home. This point was noted by the Court in *Travis v. United States*, 364 U.S. 631 (1961). The mobility of modern society enables criminals to travel and to use technology to commit crimes at distant locations.

The proper response to this point is two-fold. First, while there is no necessary connection in every case, it is certain that many crimes are in fact committed in the defendant's "backyard" so to speak; as to those, the historical reason for the venue privilege remains intact. The privilege should not be discarded or diminished by a tortured interpretation of the place that the crime is committed simply because in some cases it does not protect against distant trial. The harm to the defendant who is dragged off to stand trial in an alien venue can hardly be overstated. He will generally be removed from the support of his family and friends, cut off from employment, and deprived of the assistance of his customary counsel. Even if his regular counsel is free to leave his practice behind and travel to another district, the costs of defense must rise. Further, local rules may also require retaining local counsel, increasing costs even more. Even if this is not always true, it is true often enough to leave the constitutional command intact.

Second, if a crime is alleged to have occurred at a locale distant from residence, venue is at least connected to the place where the crime is allegedly committed. In a

meaningful sense, defendant has chosen that venue. Even if distant venue results from the acts of others, whether accomplices or coconspirators, defendant has at least "signed on" to their actions in furtherance of the common purpose. Venue that is distant from the place of residence but tied to the place where the crime was allegedly committed, based on complicity or conspiracy, derives from well-established principles of group culpability. But money laundering is not a group crime. It is not a conspiracy, nor does it require proof of aiding and abetting. Money laundering is a crime that can be committed by one person acting alone, under both §§ 1956 and 1957. Indeed, Respondent was named as the sole defendant in the three-count indictment in the district court.

II. THE ALLEGED MONEY LAUNDERING CRIMES WERE COMMITTED WHERE THE ALLEGED "FINANCIAL TRANSACTIONS" [SECTION 1956(a)(1)] AND THE ALLEGED "MONTARY TRANSACTIONS" [SECTION 1957(a)] OCCURRED – IN FLORIDA.

Petitioner argues that the fact that Respondent was not charged with the specified unlawful activity required as the source of funds by § 1956 "does not prevent the government from prosecuting her in the district where the drug trafficking occurred." Brief for Petitioner at p.14-15. Petitioner states that "in a variety of contexts this Court and the lower federal courts have recognized that an offense has been 'committed' in a particular district even though the defendant has not been shown to have personally performed any unlawful act, or indeed to have

been physically present, in the district where the prosecution is brought." Brief for Petitioner at 15. To reinforce this claim, Petitioner cites a variety of cases, each of which falls into three district types. In each of these cases, the defendant was charged with conspiracy or aiding and abetting, the defendant was accused of beginning the crime in one district and completing it in another, or the defendant was accused of committing a continuing criminal act.

Petitioner's reliance on these cases is misplaced. Money laundering is authoritatively shown by the brief of Respondent, at part III, not to be a continuing offense.[2] Amicus also agrees with Respondent's persuasive analysis of multi-act, multi-district crimes. Finally, Petitioner's reliance on the law of conspiracy is inapposite.

The rule that venue may be placed in a district where any conspirator acts in furtherance of the conspiracy is settled law. *Hyde v. United States*, 225 U.S. 347, 357 (1912). Arguably, venue based on vicarious responsibility stretches venue to its constitutional limit, especially in light of the *Pinkerton* rule. *Pinkerton v. United States*, 328 U.S. 640 (1946). Post-*Pinkerton*, Justice Jackson criticized such an expansive view of venue:

> An accused, under the Sixth Amendment, has the right to trial "by an impartial jury of the State and district wherein the crime shall have been committed." The leverage of a conspiracy

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[2] A potentially useful analogy not cited by either party is presented by the Court's discussion of open-ended versus close-ended patterns of racketeering activity in *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229 (1989).

> charge lifts this limitation from the prosecution and reduces its protection to a phantom, for the crime is considered so vagrant as to have been committed in any district where any one of the conspirators did any one of the acts, however innocent, intended to accomplish its object. The Government may, and often does, compel one to defend at a great distance from any place he ever did any act because some accused confederate did some trivial and by itself innocent act in the chosen district. Circumstances may even enable the prosecution to fix the place of trial in Washington, D.C. where a defendant may lawfully be put to trial before a jury partly or wholly made up of the Government that accuses him.

Krulewitch v. United States, 336 U.S. 440, 452-453 (1949) (Jackson, J., concurring).

Money laundering prosecutions are unlike conspiracy prosecutions for the reasons stated above. The crime is readily capable of being committed by one person alone through a financial transaction (section 1956) or a monetary transaction (section 1957), accompanied by proof of the requisite mens rea.[3] There are no shadowy

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[3] In *United States v. Campbell*, 977 F.2d 854, 857 (4th Cir. 1992), the court stated that conviction under 1956(a)(1)(B)(i) requires "proof of the defendant's knowledge of two separate facts: (1) that the funds involved in the transaction were the proceeds of illegal activity; and (2) that the transaction was designed to conceal the nature of the proceeds."

The same analysis would clearly apply to a prosecution under B(ii): the Government would need to prove that the defendant had knowledge that the funds were proceeds of illegal activity and that the transaction was designed to avoid a transaction reporting requirement.

agreements which, in many cases, the government must prove by inference from circumstantial evidence. Further, it may be that placing venue in conspiracy prosecutions anywhere a conspirator agrees or acts is a necessary response to group criminality. After all, the trial must be held somewhere, and as long as there is to be a joint trial, there is no basis for favoring one codefendant over another. However, Petitioner offers no compelling need to extend these anomalies of the venue requirement in conspiracy cases to money laundering prosecutions.

Petitioner cites *United States v. Johnson*, 323 U.S. 273 (1944) as supporting its position that a defendant may be tried in a district "despite the absence of evidence that the defendant had personally committed any criminal act, or indeed had ever been physically present in the district . . . " Brief for Petitioner at 19. A complete reading of the passage yields a different meaning:

> Aware of the unfairness and hardship to which trial in an environment alien to the accused exposes him, the Framers wrote into the Constitution that "The Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed . . . " Article III, s. 2, cl. 3. As though to underscore the importance of this safeguard, it was reinforced by the provision of the Bill of Rights requiring trial "by an impartial jury of the State and district wherein the crime shall have been committed." Sixth Amendment. By utilizing the doctrine of a continuing offense, Congress may, to be sure, provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates. Thus, *an illegal use of the mails or of other instruments of commerce may subject the*

> *user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any intervening district.* Plainly enough, such leeway not only opens the door to needless hardship to an accused by prosecution remote from home and from appropriate facilities for defense. It also leads to the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution. *Johnson* at 275. [Emphasis indicates Petitioner's quotation].

Petitioner also argues that venue is proper in Missouri because " 'the nature of the crime alleged and the location of the act or acts constituting it,' *Anderson*, 328 U.S. at 703, support the conclusion that respondent may be prosecuted for money laundering at the site of the 'specified unlawful activity.' " Brief for Petitioner at 22. This is true, Petitioner claims, because Respondent could be charged in Missouri as an aider and abettor or as a coconspirator of the underlying drug trafficking offense if she "had furnished material assistance to ongoing drug trafficking activities in the Western District of Missouri." Brief for Petitioner at 22-23. This is a very big "if." The simple fact is that the Respondent was charged with neither. As the Chief Justice of this Court has said, "[a]ll of this . . . adds up to little more than saying that if my aunt were a man, she would be my uncle." *Florida v. Royer*, 460 U.S. 491, 529 (1983). (Rehnquist, J., dissenting).

CONCLUSION

The judgment of the Eighth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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